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84-1174 (1)

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CLERK

NUMBER _____

IN THE SUPREME COURT OF THE

UNITED STATES

ESTHER C. MONZELLO

Petitioner

VS

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ESTHER C. MONZELLO

IN PROPRIA PERSONA

607 W Halyard

Port Hueneme, Calif. 93041

(805) 984-1931

Questions Presented For Review

Question #1

Whether Judge Edward Rafeedie, Judge Richard Gadbois, Chief Judge Manuel Real and Judge Cynthia Holcomb Hall, acting in collusion with each other and Respondent Automobile Club of Southern California, "grossly abused their discretion" and "committed prejudicial error" in denying Petitioner Esther C. Monzello's constitutional right under the Sixth and the Fourteenth Amendment to the United States Constitution to an impartial, unbiased Judge in Petitioner's proceedings before the Court by denying on January 3, 1983 pursuant to Order (App. A13 thru 15) signed by Judge Cynthia Holcomb Hall - Petitioner Esther C. Monzello's "Motion To Disqualify Judge Edward Rafeedie pursuant to Title 28 United States Code Section 455"?

Question #2

Whether Judge Edward Rafeedie acting in

collusion with Respondent Automobile Club of Southern California "grossly abused his discretion" and "committed prejudicial error" in abridging Petitioner Esther C. Monzello's constitutional right to a trial by jury under the Seventh Amendment to the United States Constitution and Title 29 United States Code, Section 626(c), Chapter 14, Section 7(c) and the Federal Rules of Civil Procedure 38(a) (App. D107) and the Declaration of Independence 1776:

a. by dismissing with prejudice Petitioner's "Complaint For Age Discrimination In Employment" pursuant to Fraudulent Order Re Dismissal Of Action And Award of Reasonable Attorney's Fees entered on May 31, 1983? (App. A8 thru 12)

Question #3

Whether Judge Cynthia Holcomb Hall acting in collusion with Respondent Automobile Club of Southern California "grossly abused her discretion" and "committed prejudicial error" in denying Petitioner

Esther C. Monzello's constitutional right to due process under the Sixth and Fourteenth Amendments to the United States Constitution:

a. by signing on January 3, 1983 Order on "Motion To Disqualify Judge Edward Rafeedie? (App. A13 thru 15)

b. by signing on April 25, 1984 Order Denying Plaintiff's Motion To Alter Record? (App. A19 thru 20)

Question #4

Whether Magistrate James W. McMahon acting in collusion with Respondent Automobile Club of Southern California "grossly abused his discretion" and "committed prejudicial error" in denying Petitioner Esther C. Monzello's right to due process and an impartial unbiased proceedings under the Sixth and the Fourteenth Amendments to the United States Constitution:

a. by threatening Petitioner with a United States Marshal at hearing February 1, 1983 (App. D5 TR 2/1/83) on Respondent's Motion

To Compel Plaintiff To Appear At Her Deposition and Produce Documents?

b. By ordering a "preliminary injunction" against Petitioner Esther C. Monzello and her personal counsel, Ben A. Monzello, her husband at the hearing on February 1, 1983 (App. D1 thru 40 TR 2/1/83) on Respondent's Motion For An Order To Compel Plaintiff To Appear At Her Deposition and Produce Documents?

c. By issuing Order Re Discovery Matters effective February 1, 1983 (App. D41 thru 48) containing a "preliminary injunction" on Respondent's Motion For An Order To Compel Plaintiff To Appear At Her Deposition and Produce Documents?

Question #5

Whether Judge Edward Rafeedie and Magistrate James W. McMahon in collusion with the Respondent Automobile Club of Southern California "grossly abused their discretion" and "committed prejudicial error" in denying Petitioner Esther C. Monzello's

constitutional right to due process under the Fifth, Sixth and the Fourteenth Amendments to the United States Constitution:

a. by Magistrate James W. McMahon denying Petititioner the assistance of her personal counsel, Ben A. Monzello, her husband at hearing on February 1, 1983 (App. D1 thru 40 TR 2/1/83) on Respondent's Motion For An Order To Compel Plaintiff To Appear At Her Deposition and to Produce Documents?

b. by Judge Edward Rafeedie denying Petitioner the assistance of her personal counsel, Ben A. Monzello, her husband by sustaining Order Re Discovery Matters (App. D41 thru 48) without a hearing by issuing Memorandum Opinion and Order entered on March 18, 1983 (App. D48 thru 59)?

c. by Magistrate James W. McMahon denying Petitioner the assistance of her personal counsel, Ben A. Monzello, her husband at her deposition scheduled for March 8, 1983

at hearing on February 1, 1983 (App. D20 thru 28 TR 2/1/83) and in Order Re Discovery Matters issued by Magistrate James W. McMahon and effective February 1, 1983 (App. D41 thru 48) on Respondent's Motion For An Order To Compel Plaintiff To Appear At Her Deposition And Produce Documents?

d. by Judge Edward Rafeedie denying Petitioner the assistance of her personal counsel, Ben A. Monzello, her husband at her deposition scheduled for March 8, 1983 by sustaining Order Re Discovery Matters (App. D41 thru 48) without a hearing by issuing Memorandum Opinion and Order entered on March 18, 1983 (App. D48 thru 59)?

e. by Judge Edward Rafeedie denying Petitioner the assistance of her personal counsel, Ben A. Monzello, her husband and threatening Petitioner and her personal counsel, Ben A. Monzello, her husband with jail and contempt at hearing May 23, 1983 (App. D62; D64; D80; D83 TR 5/223/83) on

Respondent's Motion To Dismiss Action With Prejudice And Award of Reasonable Attorney Fees?

Question #6

Whether Judge Edward Rafeedie acting in collusion with Respondent Automobile Club of Southern California "grossly abused his discretion" and "committed prejudicial error" in denying Petitioner Esther C. Monzello's constitutional right to due process under the Sixth and Fourteenth Amendments to the United States Constitution:

a. by signing on March 17, 1983 Memorandum Opinion And Order (App. D48 thru 59) on Petitioner's "Motion To Appeal Order Re Discovery Matters" in violation of Local Rule 7(a) (App. D106)?

b. by signing on April 7, 1983 Order in violation of Local Rule 7(a) (App. D106)? (Due to Judge Rehnquist's refusal to grant Petitioner the time requested Petitioner is unable to furnish this Court with a

copy of this signed order. The District Court's document number is #94.)

c. by threatening Petitioner Esther C. Monzello and her personal counsel, Ben A. Monzello, her husband with jail and contempt at hearing May 23, 1983 (App. D80; D83 TR 5/23/83) on Respondent's Motion To Dismiss Action With Prejudice And Award of Reasonable Attorney's Fees?

d. by signing on May 26, 1983 Order Re Dismissal Of Action And Award of Reasonable Attorney's Fees (App. A8 thru 12) on Respondent's Motion To Dismiss Action With Prejudice And Award of Attorney's Fees in violation of Local Rule 7(a) (App. D106)?

e. by signing and entering an informal unpublished Order Re Dismissal Of Action And Award of Reasonable Attorney Fees with a date certain for compliance (App. A8 thru 12) prepared by James A. Zapp Attorney for Respondent Automobile Club of Southern California and failing

to serve this final order on Petitioner and substituting for this final order service on Petitioner of a second fraudulent unsigned entered informal unpublished Order Re Dismissal Of Action And Award of Reasonable Attorney Fees (App. A1 thru 7) prepared by James A. Zapp Attorney for Respondent Automobile Club of Southern California with no date certain for compliance (App.D149 thru 151) in violation of Title 18 USC Chap 47, Section 1001? f. by signing on May 23, 1984 Order Denying Petitioner's Motion To Correct Record (App. A21 thru 23) in violation of Local Rule 14 (App. D-107)?

Question #7

Whether the Court of Appeals "grossly abused its descretion" and "committed prejudicial error" in affirming the "dismissal with prejudice" by the District Court of Petitioner's "Complaint For Age Discrimination In Employment" relying upon its own findings of facts in-

stead of reviewing the district court's findings under "clearly erroneous" standard pursuant to Memorandum filed August 8, 1984 (App. A24 thru 36)?

Question #8

Whether the Court of Appeals "grossly abused its descretion" and "committed prejudicial error" in denying Petitioner's constitutional right under the Sixth and Fourteenth Amendments to the United States Constitution to an impartial, unbiased review of Petitioner's Appeal in ruling on Petitioner's Appeal pursuant to Memorandum filed August 8, 1984 (App. A24 thru 36) prior to perfecting the record of the District Court by not holding an evidentiary hearing on Petitioner's charges of:

1. Malicious, Intentional and Deliberate Falsification of Record - (Transcript of January 3, 1983 by Judge Cynthia Holcomb Hall Presiding on Motion To Disqualify Judge Edward Rafeedie) -- By Judge Cynthia Holcomb Hall, United

States District Court, Central District.

2. Malicious, Intentional and Deliberate Falsification of Record - (Document #56 - United States District Court, Central District of California - Civil Minutes - General - Proceedings: Mandatory Status Conference - January 3, 1983) -- by Judge Edward Rafeedie, United States District Court, Central District.

3. Malicious, Intentional and Deliberate Falsification of Record - (Reporter's Transcript of Proceedings May 23, 1983 Judge Edward Rafeedie Presiding On Motion to Dismiss Action With Prejudice and For An Award of Reasonable Attorney's Fees) -- by Judge Edward Rafeedie United States District Court, Central District.

Question #9

Whether the California Department of Fair Employment and Housing denied Petitioner Esther C. Monzello her constitutional right

to due process and an impartial, unbiased proceeding before the Department under the Sixth and Fourteenth Amendments to the United States Constitution and Rules and Procedures of the Equal Employment Opportunity Commission which mandates the procedures that must be followed by the Department of Fair Employment and Housing Commission in their review of Petitioner's "Complaint of Age Discrimination In Employment" by denying Petitioner the right to cross-examine witnesses against her in a Fact Finding Meeting with Petitioner and Respondent and by informing Cynthia Martinez Staff Attorney for the Respondent that since part of the complaint was that Respondent did not have the appropriate Age Discrimination Notice posted as required by Title 29 United States Code, Chapter 14, Section 8 that she, Attorney Cynthia Martinez, was to be sure it was posted when the investigator came to check whether it was posted or not? FEPC File #FEP 80-81 B7-1953ae.

Question #10

Whether the Equal Employment Opportunity Commission denied Petitioner Esther C. Monzello's constitutional right under the Sixth and Fourteenth Amendments to the United States Constitution to am impartial, unbiased review of the California Department of Fair Employment and Housing findings by failing to determine that the Department of Fair Employment and Housing had failed to follow the procedures mandated for them to follow in considering Petitioner's "Complaint of Age Discrimination In Employment? EEOC File #09281277.

List of All Parties

Esther C. Monzello, Petitioner

Automobile Club of Southern California, Respondent.

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U. S. Department of Labor

Finding that back wages were due Receipt Form WH-58 Check #749206 June 19/81

Equal Employment Opportunity Commission: "Notice of Right to Sue" May 11/82

U.S. District Court (Orders)

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U.S Court of Appeals-9th Circuit (Orders)

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8/8/84 - Memorandum Affirmed; 8/8/84 Judgment filed and entered; 8/30/84 - Mandate Issued.

Statement of Grounds On Which Jurisdiction of This Court is Invoked:

The date of the judgment and order to be reviewed is MEMORANDUM of the Court of Appeals entered August 8, 1984. The date of the order extending the time for filing this Petition to December 6, 1984 is October 23, 1984. The Supreme Court file number is A-297. The jurisdiction of this Court is invoked pursuant to 28 United States Code Section 1254(1).

Constitutional Provisions, Statutes Ordinances and Regulations:

Declaration of Independence 1776 (App.D124 thru 127) Constitutional Provisions - Article VI (App.D128) Amendment V of the United States Constitution (App.D128 thru 129) Amendment VI of the United States Constitution (App.D129) Amendment VII of the United States Constitution (App.D129

thru 130) Amendment XIV of the United States Constitution (App.D130 thru 131) 28 United States Code, Section 455 (App. D131 thru 135) 28 United States Code, Section 44 (App.D136) 28 United States Code, Section 636 (App.D136 thru 138) 29 United States Code, Section 621 (App.D139 thru 141) 29 United States Code, Section 626(c) Chapter 14, Section 7(c) (App.D141) 29 United States Code, Section 627 (App.D142) Title 18 United States Code, Section 1001 (App.D142 thru 143) EEOC Compliance Manual #529 - 14.9 Fact Finding Conference (App.D143 thru 146).

Statement Of The Case

Introductory

Since "communication" is the basic problem in any human relationship and since petition for a "writ of certiorari" is an effort to "communicate" with Judges Burger, Brennan, White, Marshall, Blackmun, Powell, Rehnquist, Stevens and Ms. Judge O'Connor

and Respondent Automobile Club of Southern California, Petitioner Esther C. Monzello approaches this request for a "writ of certiorari" with a great deal of "qualms." First, Petitioner Esther C. Monzello does not mean to demean this Court by pretending to instruct Judges Burger, Brennan, White, Marshall, Blackmun, Powell, Rehnquist, Stevens and Ms. Judge O'Connor in the law. Second, Petitioner Esther C. Monzello does, however, have something to contribute as to the facts in this case since both Petitioner Esther C. Monzello and her husband Ben A. Monzello, her personal counsel, have been participants at every stage of all of the proceedings in the lower Courts and Administrative agencies. Third, since each step Petitioner Esther C. Monzello has taken has been a learning experience, Petitioner Esther C. Monzello has learned one thing certain to wit: "The most vulnerable person in any judicial proceeding is a person such as Petitioner Esther C. Monzello

appearing In Propria Persona." Petitioner Esther C. Monzello in resolving Petitioner's "qualms" about requesting a "writ of certiorari" came to one conclusion: "If what a person is doing is right that person can only be faulted if that person does not try."

At the first appeal level Petitioner Esther C. Monzello's "qualms" appeared when Petitioner realized that the appeal would involve Judge Cynthia Holcomb Hall and that this would mitigate against Petitioner Esther C. Monzello's appeal since Judge Cynthia Holcomb Hall at one time was the law clerk of Senior Judge Richard H. Chambers of the Ninth Circuit Court of Appeals.

At the second appeal level, namely a "writ of certiorari" Petitioner Esther C. Monzello's "qualms" first appeared and forcibly as Petitioner Esther C. Monzello realized that this request for a "writ of certiorari" involves Judge Edward Rafeedie and Judge Cynthia Holcomb Hall and

Frenchie Boy Smith and this would mitigate against Petitioner Esther C. Monzello since Judge Edward Rafeedie and Judge Cynthia Holcomb Hall are personal friends, cronies and proteges of Frenchie Boy Smith - an officer-employee of the Court to which this "writ of certiorari" is directed.

However, Petitioner Esther C. Monzello's greatest "qualms" appeared when Petitioner Esther C. Monzello realized that the greatest mitigating factors against Petitioner Esther C. Monzello's request for a "writ of certiorari" are:

a. Judge Sandra Day O'Connor is a personal friend of long standing of Judge Cynthia Holcomb Hall.

b. Judge Sandra Day O'Connor and Judge Cynthia Holcomb Hall were law students and occupied the same dormitory at Stanford University.

c. Judge Sandra Day O'Connor and Judge Cynthia Holcomb Hall are personal friends and proteges of Frenchie Boy Smith.

d. Frenchie Boy Smith is an "officer-employee of the Court to which this "writ of certiorari" is directed.

e. The decision of the Court of Appeals is "psychologically tainted" for the following reasons:

(1) On July 3, 1984 the Court of Appeals heard Petitioner's motion for an evidentiary hearing on the charges of: "Malicious, Intentional and Deliberate Falsification of Record - (Transcript of January 3, 1983 by Judge Cynthia Holcomb Hall Presiding On Motion To Disqualify Judge Edward Rafeedie) -- By Judge Cynthia Holcomb Hall, United States District Court, Central District."

(2) On August 1, 1984 before the Court had rendered a decision on Petitioner's motion Judge Cynthia Holcomb Hall was nominated to be a Judge of the Ninth Circuit of Appeals.

(3) On August 8, 1984 Judge Cynthia Holcomb Hall appeared before the Senate

Judiciary Committee for a hearing on this nomination.

(4) On August 8, 1984 the Court of Appeals filed and entered its decision denying Petitioner's motion for an evidentiary hearing.

Now, Petitioner Esther C. Monzello having addressed Petitioner Esther C. Monzello's "qualms" as a barrier to a request for a "writ of certiorari" addresses the subject of "images" as a barrier to "communication" with this Court and Respondent Automobile Club of Southern California namely:

a. How does Petitioner Esther C. Monzello perceive this Court's perception of Petitioner?

b. How does Petitioner Esther C. Monzello perceive the Respondent Automobile Club of Southern California?

c. How does Petitioner Esther C. Monzello perceive this Court?

In response to (a) above, Petitioner

Esther C. Monzello perceives this Court as perceiving Esther C. Monzello's request for a "writ of certiorari" as an insult to this Court's intelligence. How can Petitioner Esther C. Monzello who is not a member of "our priesthood" have the "gall" to ask to appear before this Court as a participant. Does not this "poor little pro se" realize it is a sacrilege for Petitioner Esther C. Monzello to ask to desecrate the chambers of this Court - the "Holy of Holies" - by requesting to appear and to participate in "our sacrament" - oral argument.

In response to (b) above, Petitioner Esther C. Monzello perceives the Respondent Automobile Club of Southern California as a "gang of goons" who shoved Petitioner Esther C. Monzello out the door, jumped on Petitioner Esther C. Monzello and when Petitioner Esther C. Monzello cried out for help kicked Petitioner Esther C. Monzello in the face.

In response to (c) above, Petitioner Esther C. Monzello perceives this Court as loaded with "intellectual schizophrenics" engulfed in waves of "intellectual senility and impotence." Petitioner Esther C. Monzello perceives this Court as a Court reigning over the "Holy of Holies" - the image of a priesthood wrapped in robes invoking the atmosphere of "Deity" - in other words - a "cult."

Last and not least Petitioner Esther C. Monzello perceives this Court as a tyranny surpassing the tyranny of the King of England who made it necessary for our forefathers to declare in the Declaration of Independence 1776:

Trial by Jury shall not be abridged.

Finally, Petitioner Esther C. Monzello is aware that the "system" to which Petitioner Esther C Monzello must respond is a system of "legalized anarchy" - that the discretion of a judge is just another synonym for "bias" and that the determina-

tion of the abuse of that discretion is made by brothers of their own priesthood "at their discretion." In other words the system is a "bottomless pit" that has no walls. Judges can reach into their "bible of cited cases" and sustain any opinion their bias may desire and as Petitioner Esther C. Monzello's husband says - "opinions are like assholes - everybody has one." It is archaic in a nuclear age.....But here goes - Petitioner will give it her best --

Conclusion of "Statement of The Case"

"Introductory"

Since Petitioner began preparation of this petition for a writ of certiorari Petitioner's "qualms" have been magnified by the following events: - On October 15, 1984 Petitioner found it necessary to request an extension of time for filing this petition for the following reasons:

a. The Memorandum of the Appellate Court dated August 8, 1984 was not received by

Petitioner until September 1, 1984 due to the fact that the Appellate Court mailed the Order to an incorrect address.

b. Petitioner is required to travel long distances to do the necessary legal research in preparing this petition.

On October 15, 1984 Petitioner requested of Judge Rehnquist a 60 day extension of time for filing this petition. Judge Rehnquist gave Petitioner only 30 days and gave no reason for reducing the request for 60 days to 30 days.

a. In researching Judge Rehnquist's background Petitioner found that Judge Cynthia Holcomb Hall is a personal friend and protege of Judge Rehnquist and of Judge Sandra Day O'Connor and that these three were law school classmates at Stanford University and at one time lived in the same "hometown"- Phoenix, Arizona.

Background Facts

This petition for a writ of certiorari is the result of the Equal Employment

Opportunity Commission having issued Petitioner Esther C. Monzello on May 11, 1982 and which was received by Petitioner Esther C. Monzello on June 29, 1982 a "right to sue in a federal court" and Petitioner having filed in the United States District Court, Central District, California on September 22, 1982 a "Complaint For Age Discrimination In Employment" pursuant to Title 29 United States Code Chapter 14 and this complaint having been dismissed with prejudice on May 31, 1983 by Judge Edward Rafeedie and Petitioner having filed with the Ninth Circuit Court of Appeals on June 22, 1983 an Appeal from the dismissal with prejudice by the district court on May 31, 1983 and the Court of Appeals having on August 8, 1984 affirmed the dismissal of the district court and denied Petitioner's motion for an evidentiary hearing on charges that Judge Rafeedie and Judge Hall had falsified the records of three hearings.

Reasons For Granting A Writ of Certiorari

What Is Edward (Blubberbutt) Rafeedie?

Rafeedie is described by a well known plaintiff's personal injury lawyer as a "bouncer"....a rough and tumble fellow who ought to be a bartender someplace (Dist. Doc.#88). Petitioner disagrees - Rafeedie's only qualification is "cleaning the shithouse in a bar." Rafeedie's background is comparable to that of a "juvenile delinquent" - "a college drop-out" who from age 9 - 18 was environmentally impacted by homosexuals, pimps, whores, whoremongers, gamblers, dope pushers etc. - you name it (Dist. Doc #88). Rafeedie's background is one impacted with an abnormal interest in "young boys" as evidenced by the following:

"Los Angeles Times - Tuesday, November 20, 1984 - THE STATE - A former Little League coach who pleaded guilty to sexually molesting nine boys was sentenced in Santa Clara County to 71 years in

prison after admitting that he sexually abused another 40 youngsters in offenses stretching back 17 years. Jeffrey Lee Gridley, will not be tried for additional offenses, Deputy Dist. Atty. Alan Nudelman said."

(a) A volunteer to chair the first indigent panel for misdemeanors (relating mostly to young offenders who are indigent) in Santa Monica. (b) A member of: Santa Monica Young Men's Christian Association; Pacific Palisades and Malibu Young Men's Christian Association. (c) Coach Pacific Palisades Young Men's Christian Association Basketball for four years. (d) Coach Malibu Boys Football. (e) Coach Pacific Palisades Boys Football. (f) Team Manager and Past President Malibu Little League. (g) Member Executive Board Great Western Council Boy Scouts of America. (h) Vice President 1975, 1976, 1977 Great Western Boy Scouts Council of America. (i) Chairman of Scout-O-Rama.

(Blubberbutt) Rafeedie is a strong and so called courageous and tough Judge only when dealing with the weak such as an individual appearing In Propria Persona and as evidenced by his ruling in 1984 where Rafeedie undercut the ruling of a fellow federal judge - Judge Terry Hatter - Central District - Judge Hatter had ordered a ban on deporting unaccompanied minors after reviewing the case of a 14-year-old boy who was deported to Mexico although he was a legal United States resident. Rafeedie lifted this ban on deportation of unaccompanied minor MEXICAN aliens. Immigration and Naturalization Service officials complained that the order had resulted in holding facilities filled with youths suspected of being illegal MEXICAN aliens. Rafeedie also evidenced a great deal of racism in this decision. Petitioner is quite certain that had these young illegal MEXICAN aliens been JEWISH - Rafeedie's decision would have been diff-

erent. This decision is also in keeping with his "ass-hole buddy" William Frenchie-Boy Smith's demand that the Courts adjudicate no rights to aliens. Rafeedie has a simple demented view of life. Civil law and criminal law are all the same - lawyer problems. Everything is either black or white and if you are not a Jew you are an Arab. No - Rafeedie is neither brave or courageous but an "intellectual coward" - a "political animal" a "hack" - a loner - a bouncer - an abnormal interest in young boys - a split (schizophrenic personality) - a racist - a man who at the Mandatory Status Conference had the appearance and mannerisms of having been on a "heroin-kick" for a month - completely out of control - irrational.

<u>The Who-What- Which-Where-When-Why and How Of William "Frenchie-Boy" Smith</u>

1. "Frenchie-Boy" Smith is a "slob" who has an obsession to be appointed to the next vacancy on the United States Supreme

Court. As a member of the Board of Directors of the Respondent, Frenchie-Boy Smith was actively involved in discriminating against older workers of the Respondent.

2. "Frenchie-Boy" Smith has wrapped himself in the "mantel" of the Attorney General of the United States but basically this character is a wheeling, dealing, sleazy, slimy, shady society-lawyer who on January 3, 1983 when the hearing on Petitioner's "Motion To Disqualify William Frenchie-Boy Smith's asshole buddy Edward (Blubberbutt) Rafeedie" was to be heard - Frenchie-Boy Smith was not in Washington D. C. tending his shop but was in the Los Angeles area wheeling and dealing at the Vintage Club at Indian Wells on New Year's Eve (App.D98 thru 101) . . . and who on March 7, 1983 when the hearing on Petitioner's Appeal Re Discovery Matters was to be heard by William Frenchie-Boy Smith's asshole buddy Edward (Blubberbutt) Rafeedie Frenchie-Boy Smith was not in Washington

D. C. tending his shop but was in Los Angeles abetting in "judge-shopping" with his "asshole buddies" (Blubberbutt) Rafeedie and "Old Blood and Guts" Harry V. (The Cat) Cheshire and promenading, wheeling, dealing at the "Le Bal Masque" - Costume Council Masked Ball (App.D102 thru 103).

3. "Frenchie-Boy" Smith is the one who on October 29, 1981 before the Federal Legal Counsel compared all Judges in the Federal System to an animal - an OCTUPUS - sleazy - slimy - without form or substance.

4. Let's take another view of this character "Frenchie-Boy" Smith -

a. "Frenchie-Boy" Smith when "caught with his pants down" returned $50,000 director's fees to Earle M. Jorgensen Co., Los Angeles in 1982 which he had accepted as a severance payment after becoming a member of President Reagan's Cabinet.

b. "Frenchie-Boy" Smith again "caught with his pants down" repaid the government for his wife's (the social butterfly) personal

use of a limousine assigned to the Justice Department.

c. "Frenchie-Boy" Smith also cost the taxpayer $683,727 on an around the world trip in 1982 under the pretext of discussing drugs, immigration and refugee problems. "Frenchie-Boy" Smith submitted no expenses for his wife "Jeanie-girl" who went along. "Frenchie-Boy" Smith described "Jeanie-girl" as playing a "Social-butterfly" role -- a very valuable role at social functions.

d. This "Creep" who hides behind the "mantel" of the United States Attorney General was held in CONTEMPT OF COURT on September 29, 1982 by United States District Judge William P. Gray for noncompliance with the court's February 12, 1982 order to pay $3,000 attorney's fee award and ordered to pay a penalty of $100 per day for every day payment was in arrears. The case in which his client had prevailed against "Frenchie-Boy" Smith was PARALYZED VETERANS OF AMERICA vs William F. Smith (Docket

Number 79-1979-WPG).

5. The real color of "Frenchie-Boy's" character is his relationship with his law firm - where he earned a yearly stipend of $355,000 - this firm has just been sanctioned by the Central District Court for destruction of evidence.

6. It is no hassle for <u>this</u> "Frenchie-Boy" Smith in abetting a little "judge-shopping" with asshole buddies "Old Blood and Guts" Harry V. (The Cat) Cheshire and Edward (Blubberbutt) Rafeedie.

7. "Frenchie-Boy" Smith would extend "judge-shopping" to the public domain by insisting on a particular "intellectually biased attitude" on the part of a person to be appointed to the Federal Judiciary.

8. "The Creep" William Frenchie-Boy Smith made his reputation as a specialist in labor law on behalf of management. "The Creep" William Frenchie-Boy Smith said that he has spent 30 years dealing with the Teamsters Union and the construction workers

union and a few other. "The Creep" Frenchie-Boy Smith built his reputation for accomplishing more outside the courtroom than he did in it. "The Creep" is a specialist in "judge-shopping."

What Is The Respondent Automobile Club of Southern California?

The Respondent Automobile Club of Southern California is a front for Big banks and Big insurance companies whose primary business is selling insurance. The Respondent is a front for the most powerful "political Lobby" in California. No person can aspire to a judgeship in either a Federal or State Court without coming to grips with this Lobby. No Judge in a Federal or State Court can aspire to a promotion within their system without coming to grips with this "lobby". The Respondent further shows its contempt for the "judicial process" by maintaining a full time position of "court liason" the duty of the person being to "maintain effective judge-shopping" relations in

in all proceedings before the Courts. The Respondent's President is an attorney, a member of the "legal priesthood" -- "Old Blood and Guts (Harry V. "The Cat) Cheshire. On the Board of Directors for the Respondent in 1980 thru January 21, 1981 was William Frenchie-Boy Smith. Frenchie-Boy was also personal attorney for President Reagan. In "1980" "The Cat" and Frenchie-Boy Smith, initiated "policies" to replace older workers with younger workers due to continuing and increasing "cost problems" the Respondent was having and that has climaxed so that losses to the Respondent has increased in the Interinsurance Exchange to a net loss of $20,000,000 in 1983 and in the first two months of 1984 there was a loss of $13,000,00. Respondent was found in violation of Fair Labor Standard Act in June, 1981 (App.D90 thru 93). Respondent filed a false statement with the Employment Dev. Dept. in Oct. 1980 (App D93 thru 97).

Specific Reasons For Granting A Writ of Certiorari:

Petitioner Esther C. Monzello specifically demands that this Court grant a writ of certiorari since the affirming by the Court of Appeals of the District Court's "dismissal with prejudice" of Petitioner's "Complaint For Age Discrimination In Employment" and the denial by the Court of Appeals of an evidentiary hearing of the charges that Judge Rafeedie and Judge Hall falsified the record of three different hearings has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the district court as to call for an exercise of this Courts power of supervision. Petitioner Esther C. Monzello specifically demands that this Court grant a writ of certiorari in this case since in the enforcement of Title 28 U.S.C. Sec 455 the general and detailed

rulings of the Court of Appeals for the Ninth Circuit are in disagreement with the general and detailed rulings for the 1st, 4th, 6th, 7th, 8th and 10th Circuits. See U. S. v Cowden (1976) CA 1 Mass) 545 F2d 257; U. S. v Carmichael (C.A.4th) 726 F2d 158 (1983-1984); U. S. v Norton (C. A. 6th) 700 F2d 1072 (1983); SCA Services v Morgan (C A. 7th) 557 F2d 110 (1977); U. S. v Poludniak (C.A. 8th) 657 F2d 948 (1981); U. S. v Ritter (C.A. 10th) 540 F2d 459 (1976); and Roberts v Bailar (C.A. 6th) 625 F2d 125 (1980).

Petitioner points out to this Court that this Motion to Disqualify (Blubberbutt) Rafeedie was not the "run of the mill" type of a motion to disqualify a Federal Judge. In this instant Rafeedie was a willing, knowing participant with his "asshole" buddies William (The Creep) Frenchie-Boy Smith and Old Blood and Guts Harry V. (The Cat) Cheshire in perpetrating this fraud on the Petitioner. When

he was notified of his confirmation he made the following statement (App.D103 thru 106) to the press: "You don't get an appointment like this without a lot of support and help from a lot of people," he said. "And having been through the process, it creates a strong sense of obligation to perform so as to never disappoint those people. In other words I feel I owe those people something and what I owe them is to be the most outstanding federal judge I can be. I'm going to shoot for either the first of October or certainly within the first week or two of October," he said. Taking the oath will allow Rafeedie to "go to work" but will be followed later by a formal investiture.

Petitioner points out to this Court that (Blubberbutt) Rafeedie committed himself to be on the clock by October 13th. Petitioner points out to this Court that the latest date that Respondent could file

his Answer to Petitioner's Complaint was October 13, 1982. Petitioner points out to this Court that the record shows that the Respondent in collusion with (Blubberbutt) Rafeedie and Manuel Real transferred this case from the calendar of Judge Malcolm Lucas to the calendar of (Blubberbutt) Rafeedie on October 13, 1982. Petitioner also points out to this Court that the son of the Judge who was so accommodating in assisting (Blubberbutt) Rafeedie in perpetrating this fraud upon the Petitioner by supposedly giving him his private oath - Judge Robert Kelleher - is a member of (The Creep) William Frenchie-Boy's law firm. Petitioner points out to this Court that (Blubberbutt) Rafeedie took his second formal (phoney) oath on October 29, 1982 - he wrapped himself in his new robes - my - my - whew...and was assigned his chambers- his private shithouse - he wouldn't have to pee wee with the lawyers anymore.

On June 1, 1980 this case of Age Discrimination In Employment had its genesis when Respondent forced Petitioner to take "early retirement." On October 29, 1980 the State of California Employment Development Department ruled over the objections of Respondent that Petitioner had been forced to retire/discharged for reasons other than misconduct (App.D95 thru 97). On February 6, 1981 Petitioner filed a complaint of age discrimination with the California Department of Fair Employment and Housing. On April 28, 1981 Petitioner and her personal counsel, Ben A. Monzello, her husband met with Joan Smiles and Edith Mercer consultants for the Department of Fair Employment and Housing and at this meeting Consultant Joan Smiles refused to permit Petitioner to meet with and cross-examine any witnesses against Petitioner. In addition Petitioner was never permitted to examine any documents presented by Respondent against Petitioner. One of the complaints

against the Respondent was that Respondent did not have the proper sign posted as required by 29 United States Code Section 627. Consultant Joan Smiles said to Attorney Cynthia Martinez for the Respondent that Attorney Martinez was to be sure the sign was posted when she - Consultant Smiles - came to check to see if the sign was posted. On November 24, 1981 the Department of Fair Employment and Housing issued Petitioner a "right to sue in a state court." In December 1981 Petitioner being required to exhaust every remedy before filing a court suit filed with the Equal Employment Opportunity Commission a request for a review of the California Department of Fair Employment and Housing's findings. On May 11, 1982 the Equal Employment Opportunity Commission issued Petitioner a "right to sue in a federal court" without having contacted Petitioner in any manner as to the sufficiency of the findings of the Department of Fair

Employment and Housing. Although this "right to sue in a federal court" was issued on May 11, 1982 it was not mailed to the Petitioner until late in June and received by Petitioner on June 29, 1982. After having received, on June 29, 1982 this "right to sue in a federal court" Petitioner contacted by phone Carl Phillips Director of Personnel for Respondent and asked to copy Petitioner's personnel file. Carl Phillips told Petitioner that Petitioner could do so only through the medium of a "subpoena." Petitioner told Carl Phillips that Petitioner would obtain a "subpoena" in order to copy Petitioner's personnel file for a federal suit. On August 24, 1982 Judge Edward Rafeedie was nominated to be a Judge of the United States District Court, Central District as part of "The French Connection." On September 22, 1982 Petitioner filed a timely "Complaint For Age Discrimination In Employment" in the United States

District Court (App.D108 thru 116). On September 22, 1982 Petitioner's "Complaint For Age Discrimination In Employment" was assigned to Judge Malcolm M. Lucas now a Judge of the Supreme Court of the State of California (App.D108) and assigned Magistrate James W. McMahon for discovery (App.D116 thru 117). On September 22, 1982 Judge Edward Rafeedie was confirmed on voice vote in the Senate without a hearing over the objections of Senator Howard Baker who wanted a hearing. On September 24, 1982 Judge Edward Rafeedie's commission was issued. On September 29, 1982 Petitioner filed a timely "Demand For A Jury Trial" (App.D117 thru 118). On September 29, 1982 Chief Judge A. Andrew Hauk took his Senior status before the time he was required to do so. On September 30, 1982 Judge Manuel Real was elevated to Chief Judge United States District Court, Central District as part of "The French Connection." On October 13,

1982 Respondent in collusion with Judge Edward Rafeedie and Judge Manuel Real filed Respondent's "Answer" (Doc #5) to Petitioner's "Complaint For Age Discrimination In Employment" and had transferred on October 13, 1982 Petitioner's "Complaint For Age Discrimination In Employment" from the calendar of Judge Malcolm M. Lucas to the calendar of Judge Edward Rafeedie (Doc #6) and Judge Edward Rafeedie acknowledging such collusion by issuing on October 13, 1982 Civil Minutes (Doc #118) stating that Petitioner's Complaint For Age Discrimination was transferred to him for all further proceedings. This was all done before Judge Edward Rafeedie had a courtroom or before he had taken his public oath of office which was taken on October 29, 1982. On October 27, 1982 Judge Edward Rafeedie filed a "Minute Order" setting up a Status Conference to be held November 22, 1982 at 2:30 P. M. in Chambers opposite Attorney's Lounge since

Judge Rafeedie did not have a courtroom and had not taken his public oath of induction (Doc #12). On October 29, 1982 Judge Rafeedie took his public oath of induction, received his robes and was assigned Courtroom "0". On November 1, 1982 Petitioner filed a "Motion To Vacate Order For A Status Conference" (Doc #16) since the order was not in compliance with the time requirements of Local Rule 9.3. On November 2, 1982 Judge Rafeedie vacated order for a Status Conference set for November 22, 1982 (Doc #17) and on November 3, 1982 Judge Rafeedie reset the Mandatory Status Conference for Monday, January 3, 1983 at 2:00 P.M in Chambers of Courtroom "0" (Doc #18). On December 3, 1982 Petitioner filed a "Motion to Disqualify Judge Edward Rafeedie" pursuant to the provisions of Title 28, U. S. Code Section 455 (Doc #50) based on the fact that the record shows that Frenchie-Boy Smith, Old Blood and Guts Harry V. (The

Cat) Cheshire and Judge Edward (Blubber-butt) Rafeedie are "asshole buddies" from way back and the collusion evidenced by the record that (Blubberbutt) Rafeedie was Respondent's Boy "Friday." On December 23, 1982 Petitioner filed a Change of Address (Doc #54) from 6431 Geyser Avenue, Reseda, California to P. O. Box 668, Port Hueneme, California. On December 30, 1982 Judge Rafeedie in collusion with Respondent had Chief Judge Manuel Real, part of the "French Connection", refer Petitioner's motion for a hearing on disqualification to Judge Cynthia Holcomb Hall, part of "The French Connection" (Doc #51). The notice of referral to Judge Hall was mailed on Thursday, December 30, 1982 to an incorrect address in order to prevent Petitioner from receiving the notice of referral before the hearing date of January 3, 1983. Since it was mailed on a Thursday, Friday being a holiday for the Court and Saturday being

New Years Day (with no mail delivery) Petitioner could not have received the notice even if it had been mailed to her correct address. Petitioner appeared on Monday, January 3, 1983 at the District Court. The following is a description of this "hearing".

The Court: This motion is unopposed. I have read your motion Ms. Monzello and I do not find a basis in it for a disqualification under the statute.

The Court: No oral testimony will be allowed.

Ms. Monzello: You mean this is it?

The Court: Yes.

The Court: Mr. Zapp do you wish to be heard?

Ms. Monzello: I object to him being heard because according to the Rules of Civil Proce - - -

The Court: He doesn't wish to be heard. (Hall jumps up) That will be all. Judge Rafeedie didn't know about this. (All

but in tears) (Disappears running through the door)

An examination of the record of the District Court shows that the Order issued by Judge Hall was prepared in the office of Attorney Zapp prior to the time of the hearing, January 3, 1983 and signed and filed by Judge Hall on January 3, 1983 in violation of Local Rule 7(a) (App.D106). The Order denying Petitioner's Motion for Disqualification signed and filed by Judge Hall had the stamp from Attorney Zapp's office - ORIGINAL - on the top of the order (App.D119). This stamp - ORIGINAL - is not a Court stamp - but a stamp from an attorney's office - and the only other place in the file CV 82-4930 that this ORIGINAL stamp shows on any document are on this Order of January 3, 1983 by Judge Hall (App.D119) and Judge Hall's Order denying Petitioner's Motion To Alter Record on April 26, 1984 (App.D123) and Respondent Automobile Club's "Opposition by

Defendant to Motion To Settle Differences As To Accuracy of Record - Transcript of January 3, 1983" (App.D120) and "Opposition by Defendant to Motion To Settle Differences As To Accuracy of Record - Document #56 - Status Conference" (App.D121) and "Opposition by Defendant to Motion To Settle Differences As To Accuracy of Record - Transcript of May 23, 1983" (App.D122) - all three documents of Respondent filed on April 20, 1984 with the identical ORIGINAL stamp on all these documents (App.D119 thru 123).

Although Judge Rafeedie was supposed to suspend all proceedings until the Motion To Disqualify Judge Rafeedie had been resolved, Judge Rafeedie had not done so and Petitioner reported to his chambers the same day, Monday, January 3, 1983 for the Mandatory Status Conference. On January 3, 1983 at 2:30 P.M. Petitioner Esther C. Monzello, her husband Ben A. Monzello, her personal counsel, Attorneys

for the Respondent Cynthia Martinez and James A. Zapp, Celeste Cooley, deputy clerk for Judge Rafeedie and an unnamed individual met with Judge Rafeedie in his chambers. Only three hours before Petitioner had appeared before Judge Hall and the Motion To Disqualify Judge Rafeedie had been denied. Petitioner had never appeared before Judge Rafeedie and until he was assigned to this case had never heard of him. As Petitioner and her husband entered the chambers Petitioner and her husband were shocked at the appearance of this man. This man was unrobed, was sitting on a stool slightly elevated from the other seats. This creep had the appearance of a "pile of soft shit" - no tie - unshaven - all of that blubber hanging over that stool - a complete physical disaster. For a United States Federal Judge to appear before Petitioner Esther C. Monzello, her husband Ben A. Monzello, Attorney Cynthia Martinez, who was pro-

professionally dressed and Attorney James A. Zapp who was immaculately dressed and groomed and before his deputy clerk and the other young lady -- was an insult. One sees men like this lying on the street when one walks from the Greyhound Bus Station to the Federal Building. This creep had the appearance of having been on a "heroin kick" for a week. This man excitedly demanded to know who Petitioner's husband was even before her husband could introduce himself. Petitioner replied that he was her husband and her counsel. This slobbering creep sharply rebuked Petitioner and said she could not have counsel. This slobbering creep continued to revile Petitioner as to whether she was representing herself, belittling Petitioner as to her inability to prepare a brief. Petitioner's husband intervened to try and "cool" the conversation by saying all they wanted was a fair trial and this creep responded in an irrational manner and sarcastically asked

"what was meant by a fair trial." This creep continued to jibber and jabber at Attorney James Zapp in a non-sensical way and finally slobbered up to the point where he set discovery, pre-trial and jury trial dates. Attorney James Zapp and Cynthia Martinez appeared to be humbly embarrassed and non-plussed. Outside the chambers Petitioner asked her husband about the dates set by Rafeedie and her husband said - "This guy is a first class "con artist" - you're never going to see a trial. What you were seeing in there was a con act."

As Rafeedie stated it took a lot of hard work on the part of a lot of friends, Frenchie-Boy Smith in particular, for him to get the job. Petitioner is sure he would have never made it on his merits. Not too long after this Mandatory Status Conference on January 3, 1983 Judge Rafeedie on <u>February 16, 1983</u> gave an <u>in depth</u> interview in his chambers to Reporter

Don J. DeBenedictis of the Los Angeles Daily Journal the official newpaper of the Federal District Court and the legal profession. His bias against Petitioner was evidenced by the following excerpt from this interview:

1. there is an ever-increasing tide of meritless lawsuits

2. that suits are filed as legal extortion to shake someone down

3. that suits are filed out of vindictiveness to make someone's life miserable

4. that suits make inflated demands

5. that a great percentage of lawsuits are meritless

6 that every lawyer contrives to fit his client into the facts of new case law

Judge Rafeedie in this interview specifically singled out employment discrimination cases such as Plaintiff (Petitioner) Esther C. Monzello's "Complaint" - Judge Rafeedie states:

1. one example of this is this newly created tort of wrongful discharge from employment

2. everybody that gets fired, if they're drunk on the job, if they've been caught with their hands in the till

3. no matter what, files a lawsuit

4. Rafeedie says federal courts get their share of baseless suits as well, specifically pointing to Title VII employment discrimination cases. Everybody files a lawsuit, he said, emphasizing each syllable to show his "disgust" even when the EEOC (Equal Employment Opportunities Commission) has reviewed the matter and determined there was no sustainable claim.

Judge Rafeedie not only reflected his bias against Petitioner but that he is an "intellectual midget" in as far as the proceedings before his court are concerned. By his remarks Rafeedie is certainly not aware that the proceedings in this Title VII Age Discrimination Case are DE NOVO

proceedings and must be treated as such.

When this evidence of bias, which was not available at the time Petitioner filed her "Motion To Disqualify Judge Edward Rafeedie" was presented to the Court of Appeals - it was brushed aside as not having been raised in the lower court and even if it was to be considered it could not be considered as evidence since a Judge could not be held for his general statements. Petitioner invites the attention of this Court to the assertion that additional evidence could not be considered at the appeal level and Petitioner points out that this is contrary to IN RE Matters of Union Leader Corp., Petitioner (292 F2d 381 (1961) 1st Cir 1961 when the Judge stated "While statute permits filing of only one affidavit of bias or prejudice of judge, to the extent that further material in unrelated case might indicate judge's state of mind regarding events set forth in affidavit involved, we think we may properly

consider it (See L A Trust Deed & Mortgage EX vs Security Exchange Commission 285 F2d 162, 173 9th Cir 1960). In this case L A Trust Deed & Morgage Ex. vs Security Exchange Commission the Judge considered and ruled on the merits of an affidavit of bias that was presented to him at the appeal level and that had not been considered by the District Court. Petitioner also invites this Court's attention to the assertion by the Court of Appeals that even if it were before the Court properly on appeal the general statements made by Judge Rafeedie do not support the showing of personal bias that is required for disqualification (Wood v McEwen 644 F2d at 802). The only similarity between this case and Petitioners is that both Wood and Petitioner appeared IN PROPRIA PERSONA. Petitioner now points out to this Court that Rafeedie, Cheshire and Smith are "asshole buddies" from way back. This is what the record shows. In addition the evidence submitted

to the Court of Appeals - namely the excerpt from the Los Angeles Daily Journal was not just a general statement. This was an in depth interview given in Rafeedie's chambers to Reporter Don J. DeBenedictis on February 16, 1982 - six (6) weeks after Petitioner had met with Rafeedie at a Mandatory Status Conference which occurred on the same day as a Motion To Disqualify u Judge Edward Rafeedie had been heard. This excerpt shows a specificity of personal bias against Petitioner. Fuller, one of the greatest of grammatarians says - "A man's bias is indicated by not what he says he thinks about what he says but by what he feels about what he thinks he says." As for the substantiality of the evidence namely the newspaper article Petitioner invites this Court to Harry Lewis v Henry Curtis et al 671 F2d 779 (1982) 3d Circuit when the Judge rules reliance on Wall Street Journal article could be basis for verification of stockholder

deriative complaint. (Fed Rules Civ P. 23.1 28 USCA) "Reliance on an article in the Wall Street Journal is not reliance on an unsubstantial or meaningless investigation. Plaintiffs and their attorneys need not make further expenditures to prove independently that which may be read with some confidence of truthfulness and accuracy in a respected financial journal."

Petitioner points out again to this Court that the Los Angeles Daily Journal is the "official" paper of the District Court and the legal profession. Finally, Petitioner invites the attention of this Court to the dissenting opinion of Circuit Judge McKay in (Verniero v Air Force Academy Sch Dist #20 - 705 F2d 388 (1983) relating to the comments of a Judge in a Title VII Case: Before making his oral findings of fact and conclusions of law, the trial judge made the following remarks - not as a party of any findings of fact or any conclusions of law - but purely as a pre-

liminary matter.:

"The courts of the United States of America today, because of the requirements imposed upon the courts by Congress, are for some reason supposed to be experts in everything. And I fear that the judges of the United States of America qualify as experts in very few things. But what Congress has done is that every time Congress gets a difficult problem it passes the buck to the Courts. And most assuredly, I am no expert in matters such as this. All I know is that federal courts of this country are totally burdened with discrimination cases of every type, nature and description. And, indeed, if certain provisions of the criminal code were applicable to these cases, I would be tempted to enforce them. The provision I have in mind is in Title XVIII, which is the criminal code, and it's Section 4244 of the criminal code. The section says that when the Court has reason to question the sanity of a defen-

dant, the Court must order a mental examination. And I wonder, if that section were applicable, if every school board member in the United States shouldn't be ordered examined under Section 4244. I don't know why anyone would serve on any school board. But the only way I know that any school board member or employer can absolutely be sure of avoiding discrimination cases is to hire only handicapped females having as grandparents a Black, a Chicano, an American Indian and an Oriental, who is over 50 years of age. I think that takes care of all of the discrimination statutes."

Circuit Judge McKay's dissenting opinion in response to these remarks is as follows: "Beyond the issues raised under Mohammed, the decision of the district court is rendered suspect by inappropriate statements from the bench by the trial judge. The judge prefaced his oral findings of fact and conclusions of law with statements disparaging Congress, Title VII, and liti-

gants in employment discrimination cases. His statements displayed a clearly hostile attitude toward Title VII, a statute that he is obligated to interpret and enforce. In my view, the judge's statements provide strong grounds for questioning his impartiality. They are particularly inappropriate in a case where he must make factual findings concerning motivation and intent - issues that are not amenable to objective verification. If courts are to retain public confidence that they can adjudicate these questions fairly, judges must conduct themselves in a manner that casts no doubt on their impartiality. This court has long recognized the importance of judicial impartiality, holding that appellate courts have an inherent power to assure the absence of bias in the district courts. Texaco, Inc. v Chandler, 354 F2d 655, 657 (10th Cir. 1965), cert denied, 383 U. S. 936, 86 S.Ct. 1065, 15 L.Ed 2d 853 (1966); see United States v. Ritter, 540 F2d 459

(10th Cir) cert. denied, 429 U. S. 951, 97 S Ct. 718, 9 L.Ed 2d 722 (1963); United States v. Ritter 273 F2d 30 (10th Cir 1959) cert denied, 362 U. S. 950, 80 S.Ct. 863, 4 LEd 2d 869 (1960). Recently, Congress has recognized that the appearance of impartiality in maintaining public confidence in the judiciary. In this regard, Congress codified the American Bar Association's standard of judicial conduct, imposing upon the federal judge the affirmative obligation to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. 455(a) (Supp. V. 1981) (codifying Canon 3 C of the ABA Code of Judicial Conduct). I believe that the district judge's statements in the instant case are flatly inconsistent with the impartial demeanor required by the statute. Moreover, they express a totally inappropriate hostility toward the law he is charged to apply. Even if no other question of error were presented

these statements would raise colorable grounds for granting a new trial. In this case, there exists serious doubts that the correct legal standard for determining employment discrimination was applied. Given these doubts and given the intemperate remarks of the trial judge, I believe we should vacate the judgment and remand the case for a new trial."

Petitioner Esther C. Monzello points out to this Court that Judge Cynthia Holcomb Hall certified a fraudulent transcript of the hearing on January 3, 1983 based on this "Motion To Disqualify Judge Edward Rafeedie" to the Court of Appeals (App. D146 thru 149) and when Petitioner with the approval of Judge Farris (App.A17 thru 18) of the Ninth Circuit Court of Appeals filed a Motion To Correct Record of this hearing (Doc #127) under the provisions of FRAP 10(e) to Judge Hall, Judge Hall ordered the hearing that was set for Monday, May 7, 1984 off calendar and abus-

ing her discretion ordered "no oral argument" and ordered that Petitioner's motion be denied as "frivolous" and utterly without merit (Doc #135; App. A19 thru 20 and App.D123)

Petitioner Esther C. Monzello specifically demands that this Court grant a writ of certiorari in this case since the enforcement of Rule 37 of the Federal Rules of Civil Procedure as interpreted by this Court's rulings in National Hockey League et al, Petitioners vs Metropolitan Hockey Club Inc., et al 427 US 639, 49 L Ed 2d 747, 96 S Ct 2778) is inconsistent with Petitioner Esther C Monzello's constitutional right under the Seventh Amendment to the Constitution; Title 29 United States Code Section 626(c); Rule 38(a) of the Federal Rules of Civil Procedure and the Declaration of Independence - 1776.

Esther C. Monzello

Esther C. Monzello

EDITOR'S NOTE

PAGES 1 thru A2 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
DEC 4 1984
ALEXANDER L. STEVAS
CLERK

NUMBER 84-1174

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM 1984

ESTHER C. MONZELLO

Petitioner

VS

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

Respondent

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI

ESTHER C. MONZELLO

IN PROPRIA PERSONA

607 W Halyard

Port Hueneme, Calif. 93041

(805) 984-1931

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Fraudulent Dismissal Order #1 of

District Court

Fraudulent Dismissal Order #1 - Entered May 31, 1983 and served on Petitioner but not filed with the Court - unsigned - and with no date certain for compliance:

Affidavit

The following fraudulent dismissal order #1 - unsigned - and with no date certain for compliance was served on Petitioner by Court on May 31, 1983 and received by Petitioner on June 4, 1983.

Esther C. Monzello

Esther C. Monzello

I declare under penalty of perjury that the foregoing statement is true and correct. Executed this 31st day of October, 1984 at Port Hueneme, California.

Esther C. Monzello

Esther C. Monzello

Fraudulent Dismissal Order #1

ENTERED

MAY 31 1983

DEPUTY

FILED

MAY 26 1983

BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO Plaintiff	CASE NO. CV 82-4930 ER (Mcx)
VS	
AUTOMOBILE CLUB OF SO. CALIF., Defendant	~~PROPOSED~~ ORDER RE DISMISSAL OF ACTION AND AWARD OF REASONABLE ATTORNEY'S FEES

Defendant Automobile Club of Southern California's Motions to Dismiss Action with

Prejudice and for an Award of Reasonable Attorney's Fees came on regularly for hearing on May 23, 1983, before the Honorable Edward Rafeedie, United States District Judge. Said defendant appeared through its counsel, Paul, Hastings, Janofsky & Walker, and plaintiff appeared in propria persona. The Court, having considered all the pleadings, memoranda, affidavits, declarations and other documents filed on behalf of each of the parties herein, and having considered the oral arguments presented by the parties at the time of said hearing, hereby finds that the plaintiff (a) has willfully failed to comply with the Federal Rules of Civil Procedure and the Local Rules of this Court, (b) has willfully refused to obey Orders of this Court, and (c) has engaged in a willful and deliberate effort to avoid having her deposition taken. In accordance with said findings.

IT IS HEREBY ORDERED, ADJUDGED AND

DECREED as follows:

1. Plaintiff is ordered to pay defendant reasonable attorney's fees in the amount of $500 in connection with defendant's having to bring the instant motions. Said $500 is in addition to the $500 in reasonable attorney's fees which plaintiff was already ordered to pay defendant pursuant to Magistrate McMahon's Order Re Discovery Matters, filed February 10, 1983.

2. Plaintiff's Complaint herein is dismissed without prejudice. Plaintiff may file a motion to have her Complaint reinstated provided that plaintiff is first able to demonstrate that she has satisfied all of the following conditions precedent:

a. That plaintiff has paid defendant all sanctions which have been imposed upon her in this action, including both the $500 in reasonable attorney's fees awarded by Magistrate McMahon in

his Order Re Discovery Matters and the $500 in reasonable attorney's fees awarded by this Court in this Order; and

b. Plaintiff has agreed and stipulated to defendant's taking her deposition without any conditions precedent.

3. Plaintiff will have up to and including the date of _____ in which to file a motion to have her Complaint reinstated in accordance with the requirements of Paragraph 2 above. If plaintiff fails to file such a motion on or before said date, this Order shall be deemed to constitute a dismissal of plaintiff's Complaint with prejudice.

DATED: May 26, 1983.

EDWARD RAFEEDIE

EDWARD RAFEEDIE
United States District Judge

Proof Of Service By Court of Fraudulent Dismissal Order #1 - Entered May 31, 1983

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER MONZELLO — CV 82-4930 ER(Mcx)

PLAINTIFF(S)

VS — NOTICE OF ENTRY

AUTOMOBILE CLUB OF SO. CALIF.,

DEFENDANT(S)

TO THE ABOVE NAMED PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

You are hereby notified that ORDER RE DISM OF ACTN & AWARD OF REASONABLE ATTY FEES in the above entitled case was entered in the docket on 5-31-83 .

(Eliminate paragraph dealing with exhibits)

I, Clerk of the United States District Court, Central District of California, and

not a party to the within action, hereby certify that on 5-31-83, I served a true copy of this notice of entry on the parties in the within action by depositing true copies thereof, enclosed in sealed envelopes, in the United States Mail in the United States Post Office mail box at Los Angeles, California, addressed as follows:

James Zapp
555 S Flower St 22nd Flr
LA CA 90071

Esther Monzello
3600 Harbor Blvd. Apt #109
Oxnard, CA 93030

CLERK, U. S. DISTRICT COURT

By Sandra Butler
Deputy Clerk

Fraudulent Dismissal Order #2 Of District Court

Fraudulent Dismissal Order #2 - Entered on May 31, 1983 - Document #110 - signed and with a date certain for compliance, filed with the Court - not served on Petitioner.

Affidavit

The following fraudulent dismissal order #2 - signed - and with a date certain of June 3[illegible], 1983 was obtained from the File Room of the United States District Court, Central District of California on June 9, 1983. This fraudulent dismissal order #2 was not served on Petitioner.

Esther C. Monzello

Esther C. Monzello

I declare under penalty of perjury that the foregoing statement is true and correct. Executed this 31st day of October, 1984 at Port Hueneme, California.

Esther C. Monzello

Esther C. Monzello

Fraudulent Dismissal Order #2

Document #110

PROPOSED

Enter JS-6

'83 MAY 24 PM 3:36

U.S. DISTRICT COURT

FILED

MAY 26 1983

CLERK, U.S. DISTRICT COURT

BY [illegible] DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO

Plaintiff

vs.

AUTOMOBILE CLUB OF SO. CALIF.,

Defendant

CASE NO. CV 82-4930 ER (Mcx)

~~PROPOSED~~ ORDER RE DISMISSAL OF ACTION AND AWARD OF REASONABLE ATTORNEY'S FEES

ENTERED

MAY 31 1983

CLERK U.S. DISTRICT COURT

DEPUTY

✓ Docketed

✓ Mld copy Ptys

✓ Mld Notice Ptys

✓ JS-6

May 31 1983

000082

Defendant Automobile Club of Southern California's Motions to Dismiss Action with Prejudice and for an Award of Reasonable Attorney's Fees came on regularly for hearing on May 23, 1983, before the Honorable Edward Rafeedie, United States District Judge. Said defendant appeared through its counsel, Paul, Hastings, Janofsky & Walker, and plaintiff appeared in propria persona. The Court, having considered all the pleadings, memoranda, affidavits, declarations and other documents filed on behalf of each of the parties herein, and having considered the oral arguments presented by the parties at the time of said hearing, hereby finds that plaintiff (a) has willfully failed to comply with the Federal Rules of Civil Procedure and the Local Rules of this Court, (b) has willfully refused to obey Orders of this Court, and (c) has engaged in a willful and deliberate effort to avoid having her deposition taken. In accordance with said findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

as follows:

1. Plaintiff is ordered to pay defendant reasonable attorney's fees in the amount of $500 in connection with defendant's having to bring the instant motions. Said $500 is in addition to the $500 in reasonable attorney's fees which plaintiff was already ordered to pay defendant pursuant to Magistrate McMahon's Order Re Discovery Matters filed February 10, 1983.

2. Plaintiff's Complaint herein is dismissed without prejudice. Plaintiff may file a motion to have her Complaint reinstated provided that plaintiff is first able to demonstrate that she has satisfied all of the following conditions precedent:

a. That plaintiff has paid defendant all sanctions which have been imposed upon her in this action, including both the $500 in reasonable attorney's fees awarded by Magistrate McMahon in his Order Re Discovery Matters and the $500 in reasonable attorney's fees

awarded by this Court in this Order; and

b. Plaintiff has agreed and stipulated to defendant's taking her deposition without any conditions precedent.

3. Plaintiff will have up to and including the date of June 30, 1983 in which to file a motion to have her Complaint reinstated in accordance with the requirements of Paragraph 2 above. If plaintiff fails to file such a motion on or before said date, this Order shall be deemed to constitute a dismissal of plaintiff's Complaint with prejudice.

DATED: May 26, 1983.

Edward Rafeedie

EDWARD RAFEEDIE
United States District Judge

Order - January 3, 1983

Document #60

Order signed by Judge Cynthia Holcomb Hall on January 3, 1983 and filed on January 3, 1983 on Petitioner's "Motion To Disqualify Judge Edward Rafeedie."

ORIGINAL

ESTHER C. MONZELLO, Plaintiff

v

AUTOMOBILE CLUB OF SO. CALIF., Defendant

FILED

JAN 3 1982

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

No. CV 82-4930 ER

O R D E R

Plaintiff's motion to disqualify Judge Edward Rafeedie was referred to me pursuant to General Orders 224 and 194 on December 30,

1982. Plaintiff's motion to disqualify Judge Rafeedie for personal bias or prejudice is denied. The motion filed by plaintiff (together with the affidavit filed in support thereof) is legally insufficient for a finding of personal bias or prejudice. Plaintiff relies primarily on Judge Rafeedie's having been confirmed at or about the time this case was commenced and the case thereafter being transferred to him, and Attorney General William French Smith having been involved in the confirmation process and having been a member of the Board of Directors of the Automobile Club of Southern California in 1980.

There is no showing of Judge Rafeedie's having bias or prejudice. Plaintiff has the burden of alleging facts from which a reasonable person would fairly infer that Judge Rafeedie is personally and extra-judicially biased or prejudiced. Wood v. McEwer, 644 F2d 797, 802 (9th Cir. 1981).

The suggestions in plaintiff's affidavit fail to meet this burden.

Date: January 3, 1983.

Cynthia Holcomb Hall

Order - March 22, 1984

Ninth Circuit

Order of March 22, 1984 by U. S. Circuit Judge Mary M. Schroeder on Petitioner's "Suggestion That The Court of Appeals Direct That Transcript of May 23, 1983 Be Corrected" filed on March 6, 1984.

FILED

MAR 22 1984

PHILLIP B. WINBERRY

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTHER C. MONZELLO	No. 83-6004
Plaintiff-Appellant,	
vs.	DC# CV 82-4930 ER
AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,	Central California
Defendant-Appellee	ORDER

Before: SCHROEDER, Circuit Judge

Appellant's suggestion that this court direct that the transcript of May 23, 1983 be corrected is construed as a motion to

correct the district court record under Fed. R. App. P. 10(e). So construed, the motion is denied without prejudice to appellant seeking relief in district court.

United States Circuit Judge

1- J 3/14/84

Order - March 27, 1984

Ninth Circuit

Order of March 27, 1984 by U. S. Circuit Judge Jerome Farris on Petitioner's "Suggestion That the Court of Appeals Direct that Transcript of January 3, 1983 Be Corrected" filed on March 14, 1984 and Petitioner's "Suggestion That The Court of Appeals Direct Correction of Document #56 Mandatory Status Conference - January 3, 1983" filed on March 19, 1984.

FILED

MAR 27 1984

PHILLIP B. WINBERRY

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTHER C. MONZELLO — No 83-6004

Plaintiff-Appellant

VS — DC #CV 82-4930 ER

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA — Central California

Defendant-Appellee — ORDER

Before: FARRIS, Circuit Judge

Appellant's suggestions, filed on March 14 and 19, 1984, that the court correct errors in the transcript and in Document 56, regarding the district court mandatory status conference, are denied without prejudice. Appellant may seek relief in the district court.

1-J 3/21/84

United States Circuit Judge

Order - April 26, 1984

Document #135

Order signed by Judge Cynthia Holcomb Hall on April 25, 1984 and filed on April 26, 1984 on Petitioner's "Motion: To Settle Differences As To Accuracy of Record And To Conform Record To The Truth FRAP 10(e) - Transcript January 3, 1983" and filed on April 12, 1984.

ORIGINAL

FILED

APR 26 1984

ESTHER C. MONZELLO, Plaintiff and Appellant vs AUTOMOBILE CLUB OF SO. CALIFORNIA, Defendant and Appellee

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

No. CV 82-4930 ER

ORDER DENYING PLAINTIFF'S MOTION TO ALTER RECORD

This matter is before the Court on plaintiff's motion "To Settle Differences As To Accuracy of Record and to Conform Record to the Truth." The Court has considered the points and authorities submitted by the parties and the reporter's transcript of the hearing of January 3, 1983. Oral argument is not necessary to rule on this motion. See Local Rule 7.11. IT IS HEREBY ORDERED that plaintiff's motion is denied on grounds that it is frivolous and utterly without merit. IT IS FURTHER ORDERED that the hearing set for Monday, May 7, 1984, is taken off calendar, and that this Order shall constitute the final ruling of the Court on plaintiff's motion.

Dated April 25, 1984.

Cynthia Holcomb Hall

Cynthia Holcomb Hall
United States District Judge

Order - May 22, 1984

Document #139

Order signed by Judge Edward Rafeedie on May 23, 1984 and filed on May 22, 1984 on Petitioner's "Motion: To Settle Differences As To Accuracy of Record And To Conform Record To The Truth FRAP 10(e) - Document #56" and "Motion: To Settle Differences As To Accuracy Of Record And To Conform Record To The Truth FRAP 10(e) - Transcript May 23, 1983" filed on April 12, 1984.

FILED

MAY 22 1984

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO, Plaintiff & Appellant	No. CV 82-4930 ER
v.	ORDER DENYING
AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, Defendant & Appellee	PLAINTIFF'S MOTIONS TO CORRECT RECORD

This matter is before the Court on the plaintiff's motions "To Settle Differences As To Accuracy of Record and to Conform Record to the Truth." The Court has considered the points and authorities submitted by the parties, the reporter's transcript of the May 23, 1983 hearing, and the Minute Order of the January 1, 1983 mandatory status conference. Oral argument is not necessary to rule on this motion. See Local Rule 7.11. IT IS HEREBY ORDERED that plaintiff's motions are denied on the grounds that the record is accurate and the the motions are frivolous and without merit. IT IS FURTHER ORDERED that because plaintiff sought to supplement the record because no transcript of the January 1, 1983 mandatory status conference is available, the statement submitted by the defendant in this action is approved, pursuant to Fed. R. App. P. 10(c).

IT IS FURTHER ORDERED that the Clerk of his Court serve, by U.S. mail, a copy of this

Order on the parties in this action.

DATE: May 23, 1984.

Edward Rafeedie

EDWARD RAFEEDIE

United States District Judge

Memorandum

Memorandum - Filed August 8, 1984 was received by Petitioner Saturday, September 1, 1984.

Affidavit

The following Memorandum (without a judgment) was received by Petitioner on Saturday, September 1, 1984.

Esther C. Monzello

Esther C. Monzello

I declare under penalty of perjury that the foregoing statement is true and correct. Executed this 31st day of October, 1984 at Port Hueneme, California.

Esther C. Monzello

Esther C. Monzello

F I L E D

AUG 8 1984

Phillip B. Winberry

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTHER C. MONZELLO

Plaintiff/Appellant

v.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,

Defendant/Appellee

No. 83-6004

DC No. CV 82-4930 ER

MEMORANDUM*

Appeal from the United States District Court for the Central District of California Edward Rafeedie, District Judge, Presiding

Argued and Submitted July 3, 1984

Before: ANDERSON, TANG and FERGUSON, Circuit Judges

Esther Monzello appeals pro se from the district court's dismissal of Monzello's action for her failure to comply with the court's discovery orders. Monzello contends on appeal that: (1) the magistrate and the district court judge abused their discretion in ordering Monzello to appear at depositions and to produce documents; (2) the district court abused its discretion in dismissing her action; and (3) the district

judge should have been disqualified. Also before the court are Monzello's motions for hearing on her charges that the district court falsified the records of three different proceedings conducted in the district court. We deny Monzello's motions and affirm the dismissal of her action.

1. Did the Magistrate and the District Court Abuse Their Discretion in Ordering Monzello to Appear at a Deposition and to Produce Documents?

A district court's exercise of discretion in issuing a discovery order will not be disturbed unless the record creates "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." Anderson v. Air West, Inc. 542 F.2d 522, 524 (9th Cir. 1976) (quoting In re Josephson, 218 F 2d 174, 182 (1st Cir. 1954).

a. The Magistrate's Order of February 10, 1983

On February 10, 1983 Magistrate McMahon ordered Monzello to appear for her deposition commencing on March 8, 1983 and also ordered Monzello to pay the Automobile Club $500 as the reasonable expenses incurred because of Monzello's failure to appear at her deposition on November 2 and 3. Monzello contends that this order was an abuse of the magistrate's discretion.

Monzello alleges that she was not required to appear for the November 2 deposition because the Automobile Club did not give her thirty days notice before the scheduled deposition. The rule for noticing a deposition requires only that the notice be reasonable. Fed. R. Civ P. 30(b)(1). Contrary to Monzello's contention the Federal Rules do not require thirty days' notice for a deposition when a notice to take deposition is combined with a request to produce documents. Thus, Monzello was properly served with respect to her appearance at the November 2 deposition. Further, Monzello

raises the lack of proper notice for the first time on appeal. Although Monzello filed an "Answer" to the Notice to Take Deposition and Notice to Produce Documents at Deposition in which she rejected the notices as "premature," she did not raise the issue at the hearing on the motion to compel.

Monzello also contends that she was excused from appearing at the November 2 deposition because she had filed a motion for a protective order the previous day. Fed. R. Civ. P 37(d) provides that a party's failure to appear at a properly noticed deposition may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order under Fed. R. Civ. P. 26(c). Monzello's motion for a protective order was subsequently taken off calendar because of Monzello's failure to comply with Local Rule 3.15. When a motion for a protective order is denied in whole

or in part, the court may order that the party provide discovery and may award expenses incurred as a result of the motion to the other party. Fed. R. Civ. P. 26(c). Therefore, the magistrate was authorized to order Monzello to appear for a deposition and to award expenses to the Automobile Club after Monzello's motion for a protective order was taken off calendar.

Monzello also contends that the magistrate abused his discretion by instructing Monzello as to how the deposition and other discovery was to be conducted. Our review of the record convinces us that the magistrate's order was not an abuse of discretion.

b. Judge Rafeedie's April 7, 1983 Order

Judge Rafeedie's Memorandum and Order denying Monzello's second motion for a protective order and directing Monzello to appear for her March 8 deposition was not entered until March 18. Because the order was not entered until ten days after Monzello was supposed to appear, the Automobile Club subsequently re-

quested that the court order a new date for Monzello to appear. On April 7, 1983, the court ordered Monzello to appear for her deposition on April 19 and 20, 1983. This order was supported by the same circumstances that justified Magistrate McMahon's February 10 order and Judge Rafeedie's March 18 order, as well as Monzello's subsequent failure to appear at the March 8 deposition or to agree to an alternate date. The district court therefore did not abuse its discretion in entering the order.

At the court's direction, the Automobile Club mailed two copies of the April 7 order to Monzello, one by express mail and one by certified mail. The orders were all returned by the Post Office as unclaimed. Monzello contends that she was therefore not required to appear at the April 19 deposition because she never received the court's order.

Monzello's argument cannot stand. Fed. R. Civ. P 5(b) provides that service is complete upon mailing. Refusal to accept mail

does not vitiate service. See 4 C. Wright & A. Miller, Federal Practice & Procedure: Civil 1148. Further, Monzello does not assert that she was ignorant of the court's order or unaware of the attempts by the post office to deliver the notices. Rather, Monzello informed the court that she did not accept service of the orders because "the defendant is not the Court." Monzello's refusal to accept the notices does not excuse her failure to attend the April 19 deposition.

2. Did the District Court Abuse Its Discretion in Dismissing Monzello's Action?

a. Denial of Jury Trial

Monzello contends that she had a right to a jury trial under the Age Discrimination Act, see 29. U.S.C. 626(c) (2), and the seventh amendment, and therefore the district court had no authority to dismiss her action because it denied her that right. The right to a jury trial does not provide

protection from the dismissal of a complaint at the pretrial stage. See Wyle v. R. J. Reynolds Industries, Inc., 709 F2d 585, 592 (9th Cir. 1983); McMullen v. Travelers Insurance Co., 278 F.2d 834, 835 (9th Cir.) (per curiam), cert. denied, 364 US 867 (1960).

b. Dismissal of the Action

Fed. R. Civ. P. 37(b) (2) authorizes a district court to dismiss an action if a party fails to appear for his properly noticed deposition. Dismissal pursuant to Rule 37 must be found on a showing of willfulness, bad faith, or fault by the noncomplying party. National Hockey League v. Metropolitan Club, Inc., 427 U. S. 639, 640 (1976). Because dismissal is a harsh penalty, it should be imposed only in extreme circumstances. Raiford v. Pounds, 640 F.2d 944, 945 (9th Cir. 1981) (per curiam).

Even though the district court had less severe sanctions available, under the facts

of this case dismissal of the action was not an abuse of discretion. Monzello failed to appear for her noticed deposition, failed to cooperate with the Automobile Club's attempts to reschedule or to enter into a stipulation outlining the discovery disputes, and failed to comply with the court's orders to appear. Further, at the May 23 hearing, Monzello made no indication to the court that she was willing to comply with any future discovery orders.

3. Did Judge Hall Abuse Her Discretion in Refusing to Disqualify Judge Rafeedie?

28 U.S.C. 455 requires a judge to disqualify himself "at any proceeding in which his impartiality might reasonably be questioned." The judge should also disqualify himself when he has a personal bias or prejudice concerning a party. 28 U.S.C. 455 (b) (1). The burden is on the moving party to allege facts from which a reasonable man would fairly infer that a judge is personally and extra-judicially biased or

prejudiced. Wood v. McEwen, 644 F2d 797, 802 (9th Cir. 1981), cert denied, 455 U.S. 942 (1982).

Monzello's motion to disqualify Judge Rafeedie alleged that Rafeedie could not be unbiased because Rafeedie's confirmation as a district court judge was sent to William French Smith as Attorney General and Smith was on the Automobile Club's board of directors in 1980. Monzello's conclusory statements about Rafeedie's bias are insufficient to meet her burden to support disqualification. See Wood v. McEwen, 644 F2d at 802.

For the first time, on appeal, Monzello also claims that Judge Rafeedie's bias was evidenced by comments reported in a newspaper article that Judge Rafeedie made concerning employment-related lawsuits. Because the article was not introduced below, it is not properly before us on appeal. See G-K Properties v. Redevelopment Agency, 577 F.2d 645, 648 (9th Cir. 1978). Even if

we were to consider the article, the general statements made by Judge Rafeedie do not support the showing of personal bias against Monzello that is required for disqualification. See Wood v. McEwen, 644 F.2d at 802.

4. Motions for Hearing on Allegations of Falsification of Record

Monzello alleges that Judge Hall and Judge Rafeedie deliberately falsified the record of three different proceedings conducted in the district court. However, Monzello alleges only that the records do not "state or show what actually occurred and was said" at the hearings. She does not specify how the records have been altered or falsified. We find Monzello's conclusory statements insufficient to support an order for an evidentiary hearing on her allegations.

CONCLUSION

Monzello's motions for hearing on her charges of falsification of the record are DENIED. The district court's dismissal of

her action for failure to comply with discovery orders is AFFIRMED. Each party shall bear its own costs on appeal.

---

*This panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

NO JUDGMENT ISSUED BY DISTRICT COURT

Affidavit

No judgment was issued by Judge Rafeedie on Fraudulent Dismissal Order #1 Entered May 31, 1983 or on Fraudulent Dismissal Order #2 Entered May 31, 1983 - Document #110.

Esther C. Monzello

Esther C. Monzello

I declare under penalty of perjury that the foregoing statement is true and correct. Executed this 2nd day of November, 1984 at Port Hueneme, California.

Esther C. Monzello

Esther C. Monzello

JUDGMENT OF THE NINTH CIRCUIT COURT OF APPEALS

Affidavit

The following judgment was issued and entered by the Court of Appeals on August 8, 1984. No copy of this judgment was ever served on Petitioner by the Court of Appeals.

Petitioner was mailed a copy of this judgment by Judge Edward Rafeedie attached to the FILING AND SPREADING JUDGMENT OF COURT OF APPEALS and received by Petitioner on October 1, 1984.

Esther C. Monzello

Esther C. Monzello

I declare under penalty of perjury that the foregoing statement is true and correct. Executed this 2nd day of November, 1984 at Port Hueneme, California.

Esther C. Monzello

Esther C. Monzello

FILING AND SPREADING JUDGMENT

OF COURT OF APPEALS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 82-4930-ER Date 9/4/84

Title Esther C. Monzello - v - Automobile Club of So. California

DOCKET ENTRY

ENTERED

SEP 7 1984

FILED

SEP 4 1984

By DEPUTY

PRESENT:

HON. EDWARD RAFEEDIE Judge

Celeste Cooley — Deputy Clerk

Not Present — Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Not Present

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

PROCEEDINGS: FILING AND SPREADING JUDGMENT OF COURT OF APPEALS.

On the Courts own motion, IT IS ORDERED that the judgment of the Ninth Circuit Court of Appeals be and is hereby Ordered filed and spread upon the records of this Court. No appearance of Counsel is required in this matter.

cc: Esther C. Monzello
3101 Peninsulu Road
Apartment 101
Oxnard, CA 93030

James A. Zapp
Paul, Hastings,
Janofsky &
Walker
555 So. Flower
22nd Floor
Los Angeles,
CA 90071

Initials of Deputy Clerk CBC

JUDGMENT OF NINTH CIRCUIT

JUDGMENT

FILED
SEP 4 1984
Central District of ~~Calif~~ornia

United States Court of Appeals
FOR THE NINTH CIRCUIT

LODGED
SEP 4 1984
Clerk U.S. District Court
Central District of California

ESTHER C. MONZELLO,

Plaintiff-Appellant

v.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,

Defendant-Appellee

No. 83-6004

DC# CV 82-4930-ER

APPEAL from the United States District Court for the CENTRAL District of CALIFORNIA

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the CENTRAL District of CALIFORNIA and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the _____ judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

EACH PARTY SHALL BEAR ITS OWN COSTS ON APPEAL.

A TRUE COPY
ATTEST
Clerk of Court
by: Pat Namitz
Deputy Clerk

Filed and entered AUG 8, 1984

Transcript of February 1, 1983

IN THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA THE HONORABLE JAMES W. McMAHON, U. S. MAGISTRATE

ESTHER C. MONZELLO, Plaintiff

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, Defendant 83-0010M

C O P Y

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PLACE: Los Angeles, California

DATE: Tuesday, February 1, 1983

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APPEARANCES:

For the Plaintiff

ESTHER C. MONZELLO (in pro per)

For the Defendant:

PAUL, HASTINGS, JANOFSKY & WALKER

By: JAMES A. ZAPP

1299 Ocean Avenue

Fifth Floor

Santa Monica, California 90401

LOS ANGELES, CALIFORNIA, TUESDAY, FEBRUARY 1, 1983 10:00 AM

THE CLERK: CV 82-4930-WE (Mcx), Esther C. Monzello versus Automobile Club of Southern California. Please state your appearances.

MR. ZAPP: Good morning, Your Honor, James Zapp for the defendant, Automobile Club.

THE COURT: I didn't get your last name, sir.

MR. ZAPP: Za pp, Z-a-double p, Your Honor.

THE COURT: All right.

MRS. MONZELLO: I'm Esther Monzello, the plaintiff pro se, and this is my husband.

THE COURT: All right. This is a hearing on the defendant's motion for an order to compel the plaintiff to appear for her deposition.

The Court has received and read an application by the plaintiff for a continuance of the defendant's motion. You may be heard with respect to the application for the continuance, Ms. Monzello.

MRS. MONZELLO: Okay.

THE COURT: Please speak from the podium.

MRS. MONZELLO: Judge McMahon, I filed a motion to continue to enable me to prepare my brief, answering defendant's motion, since the defendant's motion petitions the Court to order 13 different things. I have picked a realistic date, March 22nd. Since my answer will have to be filed at least seven days before the hearing date, this will give me only six weeks to finish my brief. Thank you.

THE COURT: Do you want to be heard on that, Mr. Zapp?

MR. ZAPP: Your Honor, I think that the reasons we opposed the continuance are fully set forth in the declaration which I filed at the end of last week. If Your Honor

would have any questions, I would be glad to answer them.

THE COURT: All right. The motion to continue the hearing to a date beyond today's date is denied. The hearing on the defendant's motion will be today. You may be heard with respect to that, Mr. Zapp.

MRS. MONZELLO: All right.

THE COURT: Mr. Zapp

MRS. MONZELLO: I move --

THE COURT: Excuse me.

MRS. MONZELLO: I'm sorry.

THE COURT: You may have a seat, ma'am.

MRS. MONZELLO: I would like to speak on this before you go ahead.

THE COURT: You have been given an opportunity to speak and now I'm asking you --

MRS. MONZELLO: I move that the Court hold in abeyance its denial of my continuance request to March 22nd to enable me to file a motion appealing the denial of my continuance date of March the 22nd to Judge Rafeedie.

THE COURT: All right. Your motion is denied.

Have a seat, ma'am. Would you please have a seat and give the podium to Mr. Zapp.

MRS. MONZELLO: I'm not prepared to discuss any facet of the defendant's motion --

THE COURT: Madame, I have asked you to have a seat. Now, I'm going to call for a marshal. All right. Mr. Zapp?

MR. ZAPP: Yes, Your Honor. I won't go through all of the information that are in our papers which set forth in detail a sequence of events that have taken place since we have tried to take plaintiff's deposition as early as the first week in November. The only thing that I would like to add to our papers is that it's been an utter frustration for the defendants to simply be able to obtain what facts, if any, the plaintiff has to support her acts of discrimination. It's resulted in a great deal of additional expense and time for my client and all we are simply asking is to be able to do that which we are accorded the right to do under the Rules of Civil Procedure, and, that is,

to take her deposition to see what facts she has to support the claims that she is making. We have asked -- we have attempted for a period of three months, approximately, to obtain a resolution of this matter through various meetings, through attempts to enter into joint stipulations, all of which the plaintiff would not comply with. And, therefore, we ask the Court to order her to appear for her deposition and to produce the documents requested in our notice to produce at that deposition. We have asked for the Court to advise plaintiff as to the importance of this discovery matter and her compliance and the conduct under which this discovery should take place in the hope, Your Honor, that we will not have to come back here again and have to go through this same procedure once the deposition were to begin. And, it is for that reason we have asked you to make various advisements or orders with respect to the conduct of the deposition itself. Thank you, Your Honor.

THE COURT: All right, Mrs. Monzello, you may be heard with respect to the motion.

MRS. MONZELLO: I move that any order or instructions coming out of this hearing be put in writing and be held in abeyance until I can file a motion to appeal this decision today, all orders and instructions to Judge Rafeedie.

THE COURT: All right. They -- You don't want to be heard any further with respect to the merits of this motion; is that correct, Mrs. Monzello?

MRS. MONZELLO: I have put it all into my motion and what I have said this morning and that's all.

THE COURT: All right. The defendant's motion for an order to compell the plaintiff to appear for her deposition and to produce documents is granted. The plaintiff is ordered -- All right, Mr. Zapp, you've asked for an order that this deposition go forward on February 2nd, 1983, which is tomorrow. Ms. Monzello, apparently, wants to run an

appeal on the order that the Court is going to issue and I am going to order her to appear for a date certain in your offices to appear at the deposition. Now, that being the case, she does have a right within ten days to file for a rehearing before Judge Rafeedie. Well, whatever Judge Rafeedie does with that application is up to Judge Rafeedie but my present intention is to put this matter off for about ten days to give her an opportunity to file such a motion.

MR. ZAPP: Okay, Your Honor --

THE COURT: I want to know what your calendar problems are.

MR. ZAPP: My calendar probelms are that during the week of February 14th through February 18th I will be in San Francisco in depositions in a case before the U. S. District Court, Northern District. I will be out of town the entire week and I have a court appearance in Federal Court on Monday, February 28 and I have another deposition scheduled to begin on March 2nd, which I

expect to last March 2nd and 3rd. We could begin the plaintiff's deposition --

THE COURT: Well, what you are saying is that the, the only time that you can do it is this week or next week other --

MR. ZAPP: Otherwise, we will --

THE COURT: Other than some time in early March.

MR. ZAPP: To March 8th, that's correct, Your Honor.

THE COURT: Your discovery cutoff is when?

MR. ZAPP: Our discovery cutoff is April 1 and my only concern, Your Honor, is in the event that we have any further problems with respect to the completion of the plaintiff's deposition that we have adequate time to be able to resolve those matters prior to the cutoff date.

THE COURT: How much other discovery do you contemplate or does that hinge upon the results of this deposition?

MR. ZAPP: It does hinge upon the results of the deposition, although at this time we do

not anticipate a great deal of additional discovery.

THE COURT: You would be available sometime the first week of March or is it the second week?

MR. ZAPP: I would be available the beginning of March 8th, Your Honor.

THE COURT: All right. Ms. Monzello, how is March 8th and the succeeding days thereafter for your calendar?

MRS. MONZELLO: Fine.

THE COURT: All right.

MR. ZAPP: If I could ask Your Honor that the deposition would continue then from day to day until --

THE COURT: I anticipate such. Do you want March 7th or March 8th?

MR. ZAPP: March 8th, Your Honor. I am committed on March 7th.

THE COURT: And that's agreeable to you, Ms. Monzello, is that correct?

MRS. MONZELLO: That's correct.

THE COURT: All right. The defendant's

motion for an order to compel the plaintiff to appear for her deposition and to produce documents is granted. The plaintiff is ordered to appear for her deposition at the offices of Paul, Hastings, Janofsky & Walker at 1299 Ocean Avenue on the fifth floor in Santa Monica on March 8th, 1983 at 9:30 in the morning. The deposition is ordered to continue from consecutive day to consecutive day excepting Saturdays and Sundays until it is completed. The plaintiff is further ordered to produce the documents described in the defendant's notice to produce documents at the deposition at defendant's counsel's office at the date, time and place set for the deposition to commence. All right, now, there is a further motion before the Court for sanctions for the costs of this motion. Mr. Zapp has submitted to the Court a list of his costs for this motion and the Court will now consider the applicability of sanctions to this particular situation. Mr. Zapp, do

you wish to be heard any further on that?

MR. ZAPP: Just very briefly, Your Honor, and that is as set forth in our moving papers. I have attempted to work and cooperate with Mrs. Monzello. I particularly attempted to do this since she is not represented by counsel and may not be as familiar initially going into this procedure as would she be if she were represented. Nonetheless, she has repeatedly refused to discuss matters with me in my efforts and I find no way, no alternative way to bring to her attention the seriousness of these matters and the importance of her complying other than to impose sanctions on her for the needless time and expense to which she has caused my client. Thank you, Your Honor.

THE COURT: All right. Ms. Monzello, a motion for sanctions having been made, you have a right to a hearing with respect to the reasonableness of the amount of money which Mr. Zapp is asking. Basically, he is

maintaining that he has put in some 23 point something hours in the preparation of this particular motion and that his law firm charges $95 an hour for his services. I am sure you have read that presentation in his moving papers. You have the opportunity to a hearing at this point before I can determine whether that is a reasonable or unreasonable amount and you may be heard -- this is the time and place for that hearing and you may be heard with respect to that.

MRS. MONZELLO: I am not prepared to discuss this matter this morning and that is why I asked for a continuance so that I could put it in my brief. It's a very -- There are many requests in this motion. I am not prepared to discuss this.

THE COURT: All right, Ms. Monzello, this matter was noticed on the Court's calendar, it was filed on January 7, 1983 and it was set for today's, set for hearing today. That is within the 21 days which is required by the local rules. In anticipation

of a problem with your being able to go forward today, I ordered the clerk of this court to call you, I believe that it was either Thursday or Friday of last week after I received your motion for a continuance. And, I told the clerk to convey to you the, my position that you should be ready to go forward if your motion to continue was denied. The clerk, apparently, made such a call to you and I'm sure that that information was conveyed to you; was it not?

MRS. MONZELLO: That information was conveyed to me and I would like to ask that if you have an order for me to either give it in writing or to give it personally and not through a clerk and involve me in this way with the clerk of this court. And, I told her that I would not be prepared because I need this time and this is why I asked for the continuance because of the 13 requests that I cannot answer all in that short time.

THE COURT: Very well. All right. The

Court finds, in effect, that the defendant has forfeited her right to be heard with respect to the motion on sanctions and the Court then will consider the defendant, or the plaintiff having been given the opportunity to respond, she chooses not to respond. Pursuant to Rule 37B of the Federal Rules of Civil Procedure, the plaintiff is ordered to pay to the defendant the sum of $500 on or before March 1st, 1983. The Court finds that these are the reasonable expenses incurred by the defendant because of the plaintiff's failure to appear at her deposition. The Court has before it also the request by the defendant to issue certain orders with respect to the structure of the deposition.

MRS. MONZELLO: Judge McMahon, I would like to appeal this order to pay to Judge Rafeedie. I want the opportunity to file an appeal with him.

THE COURT: All right. Well, I will change that. It's payable on or before March 8th,

1983, so that you will have an opportunity to submit that to Judge Rafeedie. All right. I'm going to go through these requests, and, counsel, I'm going to ask you in view of, Mr. Zapp, I'm going to ask you in view of Ms. Monzello's request to have this in writing. I'm going to ask you to fill out this entire order in writing and present it to the Court as it has been presented to Ms. Monzello so that she can, so that the Court can then sign a written order so that she can understand unequivocally what her obligations are. All right, Ms. Monzello, do you intend presently at this time to take any depositions of witnesses on your behalf?

MRS. MONZELLO: No, I do not.

THE COURT: All right. So in order that you may not commence taking any depositions until the defendant has commenced, has completed your deposition, would impose no hardship on you; is that correct?

MRS. MONZELLO: That's correct.

THE COURT: All right. It is ordered that the plaintiff may not commence taking any deposition until, any depositions until the defendant has completed taking the plaintiff's deposition. There is also a request that I inform you of the consequences of your action, Ms. Monzello. You have filed a civil action in this Court and in the process of a civil action under the Federal Rules of Civil Procedure it involves this discovery process in which each side is given the opportunity to find out what it is that the other side intends to prove in Court. Now, the only way that discovery can be conducted under the format set forth in the Federal Rules of Civil Procedure is that both sides cooperate. Now, if both sides do not cooperate in the presentation or the production of evidence in discovery, discovery proceedings, then the Court has to take certain action in order to enforce the ability of the Court to get this case discovered

and then get the case to trial. If you fail to cooperate with the Court and with counsel in the production of evidence in this discovery process, then the inevitable consequence is that I am going to be put into a position or Judge Rafeedie is going to be put into a position where either he or I am going to order you to produce this evidence. Now, I have ordered you today to appear at your deposition. If you fail to appear at your deposition after having been ordered by me to appear at the deposition, undoubtedly, Mr. Zapp will come into Court and he will ask the Court to dismiss this case because you have refused to cooperate with them. Now, there are many many cases in which dismissal of a case for a failure of a plaintiff to appear at a deposition has been sustained by the Court of Appeal. So, what you in effect, would be doing by failing to appear at your deposition or by failing to answer legitimate questions at your

deposition, would be forfeiting your right to proceed in this case. Now, if you choose to do that, that is a choice which you will have made but you will in effect, have dismissed your own case by your own actions. Now, if that's what you want to do, you are, of course, you have the opportunity to do that. But, if you refuse to pay the $500, which I've ordered, and you have not been successful in your attempt to get that order overturned by Judge Rafeedie then you, again, would be in a position where you would be in default of your discovery obligations and then the Court would be in a position where it could enforce its order by dismissing this entire law suit. Now, I want you to be, to understand completely what it is that your situation is so that if the case gets into that posture, you would not be able to claim that you didn't know what you were doing. Do you understand what I've just told you?

MRS. MONZELLO: I do understand it completely.

THE COURT: All right. Now, there's been some further problem or anticipated problem with the participation of the plaintiff's husband, Mr. Monzello. Now, Mr. Monzello, is it your present intention to appear at this anticipated deposition?

MR. MONZELLO: I am the husband of Cynthia.

THE COURT: I am merely asking you is it your intention to appear at the deposition, sir?

MR. MONZELLO: Well, may I answer it in my own way?

THE COURT: So long as your own way doesn't involve a long speech, yes.

MR. MONZELLO: I don't want to make a speech to you --

THE COURT: All right.

MR. MONZELLO: -- but it seems to be that I'm the one that's on trial here.

THE COURT: All right. Do you intend to appear at the deposition, sir?

MR. MONZELLO: As I say, I am the husband of Cynthia and this is a court of equity. And it is my responsibility to support my wife in every way and if she wants me there, I will be there.

THE COURT: All right.

MR. MONZELLO: Does that answer the question?

THE COURT: That answers the question. All right, I'm going to advise you that you may not represent your wife during the course of the deposition or in any other manner related in this action. Now, you may support her in any way that a husband legitimately is entitled to support a wife. I have no objection to that and I don't want to get into that.

MR. MONZELLO: Well, I don't want to get into it either.

THE COURT: But you may not participate --

MR. MONZELLO: I don't want to get into that either, Judge.

THE COURT: All right.

MR. MONZELLO: But you brought it up.

THE COURT: All right. You may have a seat, Mr. Monzello. What I am telling you is that you may not speak at the deposition. If you want to consult with your wife, you may consult with your wife, but you may not deposit objections at the deposition. If a question is asked at the deposition that you don't like, you may not stand and say, I am objecting to this and if there is some, something that happens at the deposition that you feel is objectionable, you may not speak.

MR. MONZELLO: Would you put all of this in writing?

THE COURT: It will be put in writing so you understand what your situation is.

MR. MONZELLO: Okay. And Cynthia --

THE COURT: You may attend but you may not participate.

MR. MONZELLO: And you are going to put all of this in writing?

THE COURT: It will be in writing.

MR. MONZELLO: So there will be no misunderstanding.

THE COURT: That's correct, sir.

MR. MONZELLO: And Cynthia would like to make a motion now.

THE COURT: All right, just --

MR. MONZELLO: Do you want me to make the motion?

THE COURT: No, I want you to be seated, sir.

MR. MONZELLO: To appeal this decision also and --

THE COURT: All right, Mr. Monzello, I am asking you to be quiet, please, sir.

MRS. MONZELLO: I am just asking him something. He's not speaking for me.

MR. MONZELLO: Appeal this, make a motion to appeal this decision.

THE COURT: All right.

MRS. MONZELLO: Also, I'm making a motion to appeal this decision.

THE COURT: You don't need to make a motion

to appeal anything. If you want to appeal it, you just appeal it.

MRS. MONZELLO: Well, I just wanted to let you know.

THE COURT: All right.

MRS. MONZELLO: I have a right to pick someone to help me. He's not going to represent me and he never has.

THE COURT: All right, Mr. Monzello, I also want to inform you that any disruptive conduct on your part at the deposition will result in an order excluding you from the deposition, imposing sanctions upon your wife, including attorney's fees for the time that is wasted as a result of whatever disruptive conduct might come forward and it could possibly result in a dismissal of your wife's case. Now, Mr. Zapp, I am going to tell you that we have a procedure in this Court whereby you, if you're in the middle of a deposition, and some kind of troublesome conduct occurs at the deposition, that you may adjourn the

deposition, get on the telephone and institute a conference call with the Court. Now, I would believe that it would be -- since this case has been referred to me on a motion-by-motion basis, rather than on a blanket basis, that it would be wise for you to talk to Judge Rafeedie's clerk and establish whether Judge Rafeedie wishes me to handle something like that on his own, on his own without my participation. But, I think that he should have that straight before the deposition starts so that if you need to take recourse to the Courts, you can do it by telephone without having to adjourn the proceedings and leaving the law offices; do you understand me, sir?

MR. ZAPP: Yes, thank you, Your Honor.

THE COURT: All right. All right, Ms. Monzello, the defendant has asked me to advise you that you must provide responsive answers to proper questions during the course of the deposition and to advise you that your failure to provide those respon-

sive answers could result in the imposition of sanctions, including attorney's fees, and could result ultimately in dismissal of the law suit with prejudice for failure to answer them. I think we've talked about that and I don't think that that needs to be emphasized any further. Now, I am further going to tell you that it is improper conduct for an attorney representing one side of a law suit to contact persons who are themselves parties to the law suit or in the case of a corporate party, who are the managers of the corporate party. It is improper for you, Ms. Monzello, to personally contact Mr. Stevenson or any other managing personnel of the Automobile Club of Southern California. If you wish to schedule depositions, you may call Mr. Zapp and tell Mr. Zapp that you want to schedule such and such a deposition at such and such a time and talk about that. You may also not use your husband to contact managing

personnel of the Automobile Club of Southern California.

MRS. MONZELLO: Would you please put that in writing?

THE COURT: It will be put in writing.

MRS. MONZELLO: Thank you.

THE COURT: This does not mean to exclude you from access to witnesses at the Automobile Club of Southern California. I am merely telling you that you may not personally contact or have your husband contact managing personnel at the Automobile Club of Southern California. If you wish to -- Mr. Monzello, you may be seated sir. You are not going to participate in these proceedings.

MR. MONZELLO: It seems to me --

MRS. MONZELLO: You brought his name up.

MR. MONZELLO: I am participating. You are the one who has called me up here, sir.

THE COURT: All right.

MR. MONZELLO: As far as that's concerned, would you put that --

THE COURT: Mr. Monzello, I have told you that you are not participating in these proceedings. Now, Mr. Zapp, I would be interested in, presumably, you have thought about this problem, and I would be interested in your assistance to the Court in framing such an order so that it restricts any harassment that may be directed at these management personnel but does not restrict the acts, the legitimate acts, as to the plaintiff or the plaintiff's agents to possible witnesses within the Automobile Club.

MR. ZAPP: Fine, Your Honor.

THE COURT: Well, tell me right now what you are --

MR. ZAPP: What we propose is that, there are a number of managing agents that she has contacted including the chairman of the board, the director of personnel, and each of the managers who was involved in any way in her most recent months of employment. And I would specifically name

those individuals and, I think Mrs. Monzello having been employed at the Automobile Club for ten years, approximately, was aware of who is and who is not managers of the Automobile Club. We have no objection to her contacting outside of work and on non-working time other third-party witness employees who she may want to discuss facts of the case with. And I could frame an order that would be directed to that, to that extent.

THE COURT: Well, let's talk about it right now. What personnel do you anticipate having within this management group that should not be contacted without first contacting you and scheduling the formal discovery proceedings?

MR. ZAPP: It would be Mr. Harry Cheshire, the Chairman of the Board; Mr. Carl Philipp. Mr. C. W. --

THE COURT: Who is Mr. Philipp?

MR. ZAPP: Mr. Philipp is the Director of Personnel.

THE COURT: All right, your next name?

MR. ZAPP: Charles W. Stevenson, who is the Manager at the West Valley District Office; Lorraine Dowell, who is the Assistant Personnel Relations Manager; Mr. William Meyers, who's the Supervising District Manager, as I understand it, of the West Valley office; Mr. William Fox, who is the Supervisor at the district office; Mr. Chuck Maloney, who is the Director of Regional Offices; Mrs. Loretta Stevenson, who is the wife of Charles Stevenson and has no facts or information relevant to this case, although she is not a managing agent of the defendant, Your Honor. And, I believe those are the only people who I at this time am aware of Mrs. Monzello having attempted to contact directly. I would advise the Court if I find through subsequent information that there are others.

MRS. MONZELLO: Judge McMahon, may I speak?

THE COURT: You may.

MRS. MONZELLO: The people that he has named are not named as defendants in this case. They are witnesses on my witness list.

THE COURT: Well, I have no problem with your interviewing witnesses. That's a legitimate role of a, of an attorney and since you are acting as your own attorney, I have no problem with your contacting those people. What I am trying to do is to structure a situation whereby these people are not harassed at work and whereby you are not getting yourself involved in what would be unethical contact between a party and a managing agent of another party.

MRS. MONZELLO: Well, when you give me this, would you give me the ruling that says this so that I can understand that, give it to me in writing?

THE COURT: Well, you tell me what your problems are and right now so that -- I'm really not trying to --

MRS. MONZELLO: Is it that you can't approach a witness to -- What we were doing is approaching them on just getting a date and a time that was convenient.

THE COURT: Well, if you are going to get a date and time that is convenient for deposition --

MRS. MONZELLO: I just want a ruling so that I will know what ruling says that I can't do that.

THE COURT: Thank you. All right. Now, Ms. Monzello, I am not sure that I understand what it is that you want because you have told me earlier that you didn't want to do any depositions at all and now you are saying that if you contact these people the purpose of your contacting them would be to set up dates and times for depositions.

MR. MONZELLO: May I intervene --

THE COURT: No, you may not.

MR. MONZELLO: -- as a friend of the Court?

THE COURT: No, you may not.

MR. MONZELLO: As a friend of the Court?

THE COURT: No, you may not, sir. You may have a seat.

MR. MONZELLO: Remember that.

MRS. MONZELLO: All right. What I'm saying is that the original contact with these people was to ascertain that in not an ordering way, but in a way that would give them some leeway as to when they wanted to do it.

THE COURT: All right, so what you are saying now is that you have no present or anticipated need to contact these people because you don't intend to depose them; is that correct?

MRS. MONZELLO: No, I'm not saying that.

THE COURT: Well, is that what your intention is?

MRS. MONZELLO: I'm just saying that that is what it was.

THE COURT: All right, then --

MRS. MONZELLO: But, if I am not to contact them in any way, I want it in writing and I

want the rule so that I will know.

MR. MONZELLO: That's right, put it in writing.

THE COURT: All right, the Court will issue an order that these people are not to be contacted without previously contacting Mr. Zapp and setting up an appointment where they may be interviewed at a date and time which is convenient to the individual party, which has been preveiously cleared with Mr. Zapp.

MR. ZAPP: Your Honor, we might add with respect to other employees of the Automobile Club who have not been named, that plaintiff be ordered to refrain from contacting these individuals at their work locations or duing their working time.

THE COURT: What if she doesn't know where they live?

MR. ZAPP: We will be cooperative to the extent that plaintiff would request and through the permission of the individual witnesses in providing them with informa-

tion as to their home address, provided that those witnesses would agree to do so. Otherwise, the plaintiff would have the right to issue a subpoena if she wished to take their deposition or to talk to them and they did not wish to talk to her but the plaintiff has, apparently, indicated that she doesn't plan to take any depositions, Your Honor.

THE COURT: All right, does that impose any difficulty on you, Ms. Monzello?

MRS. MONZELLO: Well, yes, yes, it does.

THE COURT: I'm really not trying to restrict your access to witnesses. I mean, you filed a law suit --

MRS. MONZELLO: That's all I want. I just do not want that restricted.

THE COURT: You don't want what restricted?

MRS. MONZELLO: My access to witnesses if I want to --

THE COURT: Well, the Auto Club --

MRS. MONZELLO: -- contact them.

THE COURT: -- has a business to conduct

and they don't want that business interfered with by --

MRS. MONZELLO: I don't intend to go into the business to talk to these people.

THE COURT: All right, well, they don't want apparently, the Auto Club doesn't want you to be calling them on business hours now. Does that impose any difficulty for you?

MR. MONZELLO: Tell him that you'll contact them at their homes.

MRS. MONZELLO: I will contact them at their homes if I have anything that I want to discuss.

THE COURT: All right. The Court will issue the order that, that you have asked for, Mr. Zapp. All right, is there anything further that needs to be settled at this time?

MR. ZAPP: No, Your Honor. Do you want me to encompass all of these points then in the order that I present to the Court?

THE COURT: Yes, but before the order is

presented to the Court, you should present a copy to Ms. Monzello so that she is aware of what it is that you are presenting to the Court for signature.

MR. ZAPP: Okay, then, I will have to mail a copy to Ms. Monzello. She has, apparently, moved down to Port Hueneme. And, if it could be understood that, that I will call her within two days after I have sent it to her to verify that she has, in fact, received the report and that she will cooperate with that, so that I can represent that to the Court.

THE COURT: All right. You should put -- all right, the Court's order is in full force and effect today. And, I think that you understand the meaning and the content of the order. Mr. Zapp is ordered to prepare this written order immediately to present it to the Court within, after having presented it to the plaintiff, within seven days so that the defendant may, so that the plaintiff may have whatever oppor-

tunity that she wishes to, to --

MRS. MONZELLO: Judge McMahon?

THE COURT: Yes.

MRS. MONZELLO: May I speak a moment?

THE COURT: You may.

MRS. MONZELLO: I would like to ask the Court to instruct Mr. Zapp that when he does phone me, like telling me about this, that he stick to just that and not harass me, not threaten me on the phone, not write me in any threatening way. I would like -- I'm requesting that.

THE COURT: Is that any problem, Mr. Zapp?

MR. ZAPP: Your Honor, I have never in the entire course of this case threatened --

THE COURT: Well, I'm not asking you whether you have done that, I'm just asking you whether that --

MR. ZAPP: There's no problem in my complying with her request because I have never done it, Your Honor.

THE COURT: All right. I ask you to do that, Mr. Zapp.

MR. MONZELLO: I would like to include that he not threaten me and not shove himself into my face --

THE COURT: Mr. Monzello --

MR. MONZELLO: -- and threaten to strike me.

THE COURT: Mr. Monzello, you are not a party to this action.

MR. MONZELLO: But I'm a victim.

THE COURT: All right. There being no further business in this matter before the Court, this Court is in recess.

MR. ZAPP: Thank you, Your Honor.

END OF TRANSCRIPT

Certificate of Court Reporter

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE JAMES W. MAHON, U. S. MAGISTRATE

ESTHER C. MONZELLO

Plaintiff 83-0010M

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,

Defendant

C E R T I F I C A T E

I, COLLEEN MURPHY, do hereby certify I reported the proceedings in the above-entitled cause on February 1, 1983. I further certify the foregoing is a true, accurate, and complete transcript of said proceedings.

Los Angeles, California, dated this 8th day of February, 1983.

Colleen Murphy

Official Swing Court Reporter

ORDER RE DISCOVERY MATTERS

Document #70

FILED

FEB 10 1983

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO — CV 82 4930 ER

Plaintiff — (Mcx)

vs

AUTOMOBILE CLUB OF SO. CALIF., Defendant — ORDER RE DISCOVERY MATTERS

Defendant's Motion for Order to Compel Plaintiff to Appear for her Deposition Upon Oral Examination and to Produce Documents at Said Deposition and for an Award of Expenses Incurred, Including Attorney's Fees, and Plaintiff's Motion to Continue the Hearing on Defendant's Motion came before this Court for hearing with the

Honorable James W. McMahon, United States Magistrate, presiding. The Court having considered all pleadings, memoranda, declarations and other documents filed on behalf of each of the parties herein, and having considered the oral arguments presented by the parties at the time of said hearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

(1) Plaintiff's motion for a continuance of the hearing on defendant's motion from February 1, 1983 to March 22, 1983 is denied.

(2) Plaintiff's motion for the Court to issue an abeyance to give her time to appeal this Court's denial of her motion for a continuance is denied.

(3) Defendant's motion for an order to compel Plaintiff to appear for her deposition upon oral examination is granted. Plaintiff is ordered to appear for her deposition at the law offices of Paul,

Hastings, Janofsky & Walker, 1299 Ocean Avenue, Fifth Floor, Santa Monica, California 90401 on Tuesday, March 8, 1983 at 9:30 a.m. Plaintiff's deposition is ordered to continue from consecutive day to consecutive day, except for Saturdays and Sundays, until completed.

(4) Plaintiff is ordered to produce documents described in defendant's Notice to Produce Documents at Deposition on March 8, 1983 at 9:30 a.m., when her deposition commences.

(5) Defendant's motion for an award of reasonable expenses, including attorney's fees, incurred as a result of plaintiff's failure to appear for her deposition and to produce documents at said deposition is granted. Plaintiff, having rejected the opportunity to present oral argument with respect to the reasonableness of the expenses sought by defendant, and having forfeited her right to be heard with respect to said matter as a result thereof, the

Court hereby finds that $500.00 represents the reasonable expenses, including attorney's fees, incurred by defendant as a result of plaintiff's refusal to appear for her deposition and/or to produce documents at said deposition and, pursuant to Federal Rule of Civil Procedure 37(d), orders plaintiff to pay said $500.00 to defendant's counsel on or before March 8, 1983.

(6) Plaintiff is ordered that she may not commence taking any depositions until defendant has completed taking her deposition.

(7) Plaintiff is advised that her failure to appear for her deposition in accordance with this Order or to cooperate fully with defendant's legitimate discovery efforts, including but not limited to the subject matters set forth in this Order, could result in the Court's dismissal of this cause with prejudice as a result of her own conduct.

(8) If plaintiff's husband, Ben Monzello,

attends plaintiff's deposition, he is ordered that he cannot (a) represent plaintiff therein, (b) speak at the deposition, (c) posit any objections to questions directed to plaintiff, or (d) ask any questions himself during said deposition. Mr. Monzello may attend the deposition, but may not participate in the proceedings in any way. He may only support plaintiff in the way in which a husband is legitimately entitled to do so. Plaintiff is advised that any disruptive conduct by her husband in violation of this Order will result in an order (a) excluding her husband from the deposition, (b) imposing sanctions upon plaintiff, including attorney's fees, incurred as a result of the time wasted by her husband's conduct and/or (c) possible dismissal of her case with prejudice.

(9) Plaintiff is advised that she must provide responsive answers to properly asked questions during the course of her deposition upon oral examination and that her

failure to do so will result in (a) the imposition of sanctions, including attorney's fees and/or (b) in the dismissal of her case with prejudice.

(10) Plaintiff is further advised that it is improper conduct for an attorney representing one side in a lawsuit to contact persons who are themselves parties to the lawsuit, which, in the case of a corporate party, includes the managers of the corporate party. Accordingly, in order to prevent plaintiff from harassing managers or other employees of defendant, plaintiff is ordered that she may not personally, nor may she use her husband, Ben Monzello, to contact any managers of the corporate defendant herein. Specifically, the Court orders that the following managers of defendant may not be contacted in any way by plaintiff or her husband without their having previously contacted counsel for defendant and having set up an appointment when said managers may be interviewed at a date and

time previously agreed to by counsel for defendant: Harry Cheshire, Chairman of the Board; Carl Philipp, Director of Personnel; Chuck Maloney, Director of District Office Operations; Charles W. Stevenson, Manager of the West Valley District Office; William Meyer, Regional Travel Manager; Lorraine Dowell, Assistant Manager Agency Relations; William Fox, Supervisor at the West Valley District Office; and Loretta Stevenson, wife of Charles W. Stevenson. Plaintiff is further ordered that she may not contact other employees of defendant on their working time or at their work locations. Defendant has agreed to cooperate with plaintiff in providing her with the home addresses and telephone numbers of non-management employee witnesses whom plaintiff wishes to interview, provided that said employee witnesses agree to permit defendant to release such information to plaintiff and provide defendant with their written consent with respect thereto.

This Order is in full force and effect as of February 1, 1983.

DATED: February 7, 1983

James W. McMahon
United States Magistrate

MEMORANDUM OPINION AND ORDER

Document #83

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FILED
MAR 17 1983

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO, Plaintiff

NO. CV 82-4930 ER (Mcx)

v.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,

Defendant

MEMORANDUM OPINION AND ORDER

BACKGROUND

On January 7, 1983, fefendant filed a motion for an order compelling the plaintiff to appear for her deposition upon oral examination and to produce documents. Defendants also sought an award of attorneys' fees under Rule 37(d), F. R. Civ. Proc. for plaintiff's failure to appear at her deposition.

On January 12, 1983, the matter was referred to Magistrate McMahon for all proceedings. A hearing was held on February 1, 1983 at which time Magistrate McMahon granted defendant's motion and ordered plaintiff to appear for her deposition at the Santa Monica offices of Paul, Hastings, Janofsky & Walker on March 8, 1983 at 9:30 a.m. The deposition was to continue from day to consecutive day, excepting Saturdays and Sundays, until completed. Plaintiff

further was ordered to produce certain documents and to pay $500.00 before March 8, 1983 to defendant for reasonable expenses incurred by defendant. Plaintiff refused to present argument on issue of reasonableness of fees.

The magistrate's Order was filed February 10, 1983 and further provides that plaintiff may not commence taking any depositions until her own deposition is completed. Plaintiff was admonished that her failure to attend or to cooperate fully with defendant's discovery efforts could result in dismissal of this action with prejudice. Plaintiff was also admonished as to the limited role her husband could play at the deposition and her own responsibilities to cooperate in legitimate discovery efforts.

On February 1, 1983, plaintiff filed for a protective order regarding aspects of the conduct of the deposition scheduled for March 8, 1983. Plaintiff specifically sought to have the deposition canceled

and in the alternative to have the deposition occur on one day at her home in Port Hueneme and between specified hours.

Thereafter, plaintiff brought a motion to appeal Order Re Discovery Matters. These motions were consolidated for hearing on March 8, 1983 and taken under submission without oral argument.

After careful consideration of the papers submitted in this matter, the Court denies the motion for protective order and further denies the motion to appeal the magistrate's Order for the following reasons:

A. MOTION FOR PROTECTIVE ORDER

Plaintiff's motion was filed within hours of the Magistrate's determination that the plaintiff had to appear at her deposition under specified conditions.

Rule 26(c), F.R. Civ. Proc., provides as follows: Upon motion by a party or by the person for whom discovery is sought and for good cause shown, the court in which the action is pending or alterna-

tively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research development, or commercial infor-

mation not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a) (4) apply to award of expenses incurred in relation to the motion.

Plaintiff's motion does not state a single ground which could support a good cause showing for any protective order. Plaintiff states in the Supplemental Memoranda filed February 17, 1983 that if the court determined the deposition should go forward, plaintiff would modify her position and ask that the Court order the depodition to occur in Reseda in order to save defense counsel "any unnecessary

expense or inconvenience in taking plaintiff's deposition in Port Hueneme." (P.1:25;26) As defense counsel has raised no objection to the arrangement set forth in the order and plaintiff has presented no facts tending to show good cause for such an order, the request is denied. Plaintiff's motion for protective order must be denied on the additional grounds that she has again failed to comply with Local Rule 3.15. Rules 3.15.1 and 3.15.2 require that prior to filing any motion relating to discovery pursuant to Rule 26, counsel for the parties: "...shall meet in person in a good faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the disputes between the parties as possible. It shall be the responsibility of counsel for the moving party to arrange for the conference. Unless relieved by order of the Court upon good cause shown or agreement of the parties, counsel for the opposing party shall meet with counsel for

the moving party within ten (10) days of service upon him of a letter requesting such meeting and specifying the terms of the discovery order to be sought. 3.15.2 Moving Papers. If counsel are unable to settle their differences, they shall formulate a written stipulation specifying separately and with particularity each issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each such issue. The stipulation must set forth in one document which shall contain all such issues in dispute and the contentions and points and authorities of each party. The stipulation shall not refer the Court to other documents in the file. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation shall contain, verbatism, both the interrogatory and the allegedly insufficient answer, the stipulation shall be filed and served with the notice of motion. In the

absence of such stipulation, the Court will not consider any discovery motion unless otherwise ordered upon good cause shown."

Plaintiff asserts in the motion that a meeting was held to discuss the issue of her deposition. The parties met, could not resolve their differences, and Mr. Zapp refused to enter into any stipulation. Thus, plaintiff seeks to be excused for her failure to include a stipulation with the motion. Counsel for defendant states in his sworn declaration (attached to the opposition to the motion for protective order at 3) that at no point subsequent to the meeting in November did plaintiff request he enter into a stipulation and in fact plaintiff was asked on two separate occasions to enter into such an agreement and did not. It therefore appears that plaintiff has not met the clear requirements of Local Rule 3.15.2 nor has she shown good cause why this Court should excuse this failure.

B. MOTION TO APPEAL ORDER RE DISCOVERY

MATTERS

Plaintiff moves the Court to vacate in its entirety the discovery order issued by Magistrate McMahon on February 1, 1983. Plaintiff's motion to appeal, dated February 9, 1983, is stated in its entirety as follows: "Plaintiff Esther C. Monzello appeals the order of Magistrate James W. McMahon placed in effect verbally February 1, 1983 to Judge Edward Rafeedie. (Copy attached-Exhibit A) Plaintiff moves that the order be vacated and that a completely new order be issued based on the Supplemental Memoranda of facts and law that the Plaintiff will file prior to the hearing date." Under 28 U.S.C. 636(a) a judge may reconsider a magistrate's order "where it has been shown that the magistrate's order is clearly erroneous or contrary to law." Both parties have submitted detailed recitations of the facts precipitating the motion being brought before the magistrate. Plaintiff's lengthy discussion does not

address the issue of the Magistrate's denial of requested continuance. Nor does it raise legal objections to the magistrate's Order. Defendant's opposition, on the other hand, does demonstrate adequate factual and legal grounds for the magistrate's Order. The Court, having read the memoranda and defendant's reply, does not find that the magistrate's order was clearly erroneous or contrary to law. The plaintiff has included in her supplemental memoranda a "motion" which seeks an order from this Court that plaintiff's husband be appointed "co-counsel and spokesman before the Court . . . and be permitted to speak for plaintiff and on her behalf at the plaintiff's direction." This request is denied. Plaintiff is referred to Local Rule 1.2 which states: "Only a member of the Bar of this Court may enter appearances for a party, sign stipulations, or receive payment or enter satisfactions of judgment, decree or order."

Magistrate McMahon's Order at #8 fairly provides that plaintiff's husband may attend plaintiff's deposition under certain conditions which guarantee the fair and orderly progress of this case toward resolution. Plaintiff cites no applicable authority for her extraordinary request and for these reasons this "motion" is denied with prejudice.

Date: March 17, 1983.

Edward Rafeedie

EDWARD RAFEEDIE

United States District Judge

Transcript of May 23, 1983

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFEEDIE, JUDGE

PRESIDING

ESTHER C. MONZELLO No. CV 82-4930 ER

Plaintiff (Mcx)

vs

AUTOMOBILE CLUB OF

SOUTHERN CALIFORNIA

Defendant

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, May 23, 1983

Michele A. Ketchoyan - Offical Court

Reporter

442-C United States Courthouse -

312 North Spring St.

Los Angeles, Calif. 90012

(213) 687-3098

APPEARANCES:

For the Plaintiff:

ESTHER C. MONZELLO In Pro Per

3600 Harbor Boulevard, Apartment #109

Oxnard, California 93030

(805) 985-2221

For the Defendant:

JAMES A. ZAPP

Paul, Hastings, Janofsky & Walker

555 South Flower Street

22nd Floor

Los Angeles, California 90071

Also Present:

BEN A. MONZELLO

LOS ANGELES, CALIFORNIA: MONDAY, MAY 23, 1983; 10:00 A.M.

THE CLERK: Item No. 9

Civil 82-4930

Esther C. Monzello versus

Automobile Club of Southern California

Counsel, please state your appearances.

MR. ZAPP: Good morning, your Honor. James Zapp for defendant and moving party.

MS. MONZELLO: Esther C. Monzello, plaintiff Pro Se, and my husband.

THE COURT: Well, your husband may sit with you, but you are the one that must be heard on this.

Now, let me ask you, is a sweet lady like you write all these nasty things contained in this affidavit or was that the work product of your husband?

MS. MONZELLO: It was me and him. They weren't nasty.

THE COURT: You wrote those together. Well, that kind of surprised me, Mrs. Monzello, I didn't expect you to write things like that, it disappoints me.

But we have here a motion to dismiss for failure to comply with the Court's order regarding discovery and for reasonable costs. Do you wish to be heard regarding that motion, Mrs. Monzello?

MS. MONZELLO: It's the defendant's motion

he may speak first.

THE COURT: Well, I would like to hear from you what your response is. You have read the motion, have you not, you have been served with it. Can you tell me why the motion should not be granted?

MS. MONZELLO: Just a moment, please.

(Pause)

MS. MONZELLO: I am asking that the motion be denied, because I did not refuse to obey the order of the Court.

THE COURT: You have not -- just a moment. Will you remain there, please. You have not permitted the defendant to take your deposition, have you?

MS. MONZELLO: I have not refused an order of the Court.

THE COURT: I made an order that you have your deposition taken.

MS. MONZELLO: I did not receive it from the Court as of today.

THE COURT: I told you in chambers that you were required to cooperate with the

taking of a deposition and with all other discovery matters.

MS. MONZELLO: I have not received an order from the Court. I have not refused to obey it, because I have not received it.

THE COURT: Then are you ready to have your deposition taken?

(Pause)

THE COURT: Just a moment. Mr. Monzello get in the back there, please. You are not entitled to be giving advice here.

MS. MONZELLO: I'm representing myself.

THE COURT: Go on back there and take a seat.

(Pause)

MS. MONZELLO: All right. What is it you want?

THE COURT: I asked you if you were ready to have your deposition taken?

MS. MONZELLO: Well, under certain conditions, yes.

THE COURT: What conditions?

MS. MONZELLO: Of a protective order, that

says where it is to be held for my protection.

THE COURT: You had a hearing before the magistrate on that. He ordered the deposition be taken and denied the request for protective order. He set forth the conditions, did he not?

MS. MONZELLO: But I never received an order on that. The order that denied my appeal on that was not received until 18 days after that deposition was noticed.

THE COURT: Are you being completely frank with the Court, Mrs. Monzello? Havn't you really been avoiding ---

MS. MONZELLO: I have not.

THE COURT: Counsel indicates in their documents that they did not only send you a copy of the order by mail, they sent it by Federal Express, they sent it by certified mail, and you refused to accept that. Is that true?

MS. MONZELLO: The defendant is not the Court.

THE COURT: But the rules provide that when an order is made by the court, the party who is involved in it, the party who sought the order, is required to serve it on the other side. That is standard court procedure.

MS. MONZELLO: Well, according to the Local Rules, the court sends a copy to each party, and in addition, the defendant can also send a copy of that order, that order that you gave.

THE COURT: You know what will happen if you don't get your deposition taken and co-operate, is that the case will be dismissed and you will be out of court. You don't want that to happen, do you?

MS. MONZELLO: No, I don't.

THE COURT: Well, then you ought to settle down and get this deposition taken. I think the Court has been extremely patient in this case about that. It's very clear to the Court that there has been a deliberate attempt on your part to avoid having

the deposition taken. The magistrate in fact found that when he imposed sanctions upon you; I previously imposed sanctions also. You're continuing to cost these other people money and legal fees and expenses simply by your refusal. What is it that you have to hide?

MS. MONZELLO: All right. I have a solution.

THE COURT: What is it?

MS. MONZELLO: I would like my deposition noticed, and give me 45 days between the notice and when it is to be taken. So that I can have a meeting and we can come up with stipulations so that a protective order can be heard, because it was made in good cause.

THE COURT: It was heard.

MS. MONZELLO: No, it was not.

THE COURT: It was heard by the magistrate, wasn't it?

MS. MONZELLO: No.

THE COURT: Wasn't it, Counsel?

MR. ZAPP: Yes, it was, your Honor.

MS. MONZELLO: It was taken off calendar November 12th.

MR. ZAPP: Your Honor, originally plaintiff filed a motion for protective order at that time that we had properly noticed her deposition. Magistrate McMahon took that off calendar, because it did not comply with Local Rule 3.15. Subsequently, when we filed a motion to compel her to appear for her deposition, she filed first a motion for protective order -- excuse me. The same arguments that were raised in her motion for protective order were addressed in my order compelling her to appear, anticipating that she would raise these same defenses. So, Magistrate McMahon had those items before him. In addition, a week before the hearing she asked for a seven-week continuance on our motion to have the hearing to require her to appear for her deposition. She had the opportunity to discuss the same issues which she

is now apparently raising with respect to the protective order at the time that Magistrate McMahon heard the motion on our order for her to compel on February 1; thereafter, she filed the motion for protective order and appealed, which this Court took under submission, consolidated the two and then issued an order requiring her to appear, affirming Magistrate McMahon's order in entirety. So, she has had the opportunity to raise these issues, both at the time that we made the motion to order her to appear for her deposition, and then again subsequently when this Court took under consideration her appeal of Magistrate McMahon's order. And you will recall that she filed the contemporaneous motion for protective order raising the same issues and facts, that was denied by this Court quite properly.

THE COURT: Well, do you want to recite a little of the history of this that has been going on?

MR. ZAPP: Certainly, your Honor.

THE COURT: You set it forth I think pretty well.

MR. ZAPP: I apologize for having to reiterate all the facts; but, I thought only by going through a complete detailed chronology would the Court be able to understand exactly to what extent and expense and waste of resources has the defendant and the judiciary been put in this case.

We tried to notice her deposition properly; I believe it was on October 14th, that we mailed the notice, noticing it for November 2nd and 3rd, I believe. She refused to show up for that. Thereafter, she attempted to file this motion for protective order on November 1, without having discussed it with me, and accordingly, Magistrate McMahon took it off calendar for her failure to comply. Thereafter plaintiff and I had several meetings; it appeared there at least narrowed the issues as to

why she was not appearing for her deposition. I attempted thereafter for her to enter into a joint written stipulation, which she refused to do; I did that both verbally and also in writing, that's attached as an exhibit to the motion, your Honor. It was after the motion for status conference, which was held in your chambers on January 3, that we then decided that there was no alternative but to proceed unilaterally, and file a motion for her to appear for her deposition. We did so, and filed that on January 7, noticing it for February 1. Plaintiff claims that she didn't have adequate time in which to prepare, although the notice was given 25 days well in compliance with the Local Rules. Her first responde was she didn't have time to prepare; her second response was that she requested a seven-week continuance of the motion that was four days before the motion was to be heard, Magistrate McMahon denied that. At the hearing she attempted

to have the whole hearing put in abeyance while she appealed the denial of her motion for a continuance, Magistrate McMahon denied that. Then he proceeded to order her to appear for her deposition, giving her time in which to file a review with you, and then imposed the sanctions and the other restrictions with respect to the conduct of the deposition. We had asked for that, your Honor, simply so we wouldn't have to continually coming back before the Court and spending that time, anticipating there might be problems in the actual taking of the deposition, which I think perhaps the Court would realize might be apparent based on the pleadings if you have had an opportunity to review. It was thereafter that she filed an appeal of Magistrate McMahon's order, and filed a motion for protective order, which she restated the very same items that were raised in our original motion for her to appear. It might be of note to the Court that when the hearing took

place on February 1, she stated that she was not prepared to discuss the issues raised in our motion, and therefore refused to put forth any argument, although she was given adequate opportunity by Magistrate McMahon. She then turned around in the same day filed the motion for the protective order, raising the very same issues which she couldn't discuss on that day, and did not do so. The Court took the two motions that were made by the plaintiff under consolidation and under submission, the hearing was scheduled to be on March 7; Magistrate McMahon's order required her to appear on March 8 for the deposition. We received verbal notice from your clerk Celeste Cooley, that you were going to deny her motion, and the deposition should go forward on the 8th. I attempted to contact plaintiff by telephone, and your clerk said she would also attempt to do so, I don't know whether she was able to do so or not, probably if she was not able to,

because I was not able to. When she didn't appear on the 8th, I sent her a telegram on the 8th, which is included in our motion. I asked her to appear on the 9th, I subsequently received information that the telegram was received on the 9th she never made any attempt to contact me with respect to the taking of her deposition. Unfortunately, your Honor, the Court's written memorandum order did not come out until about - I don't remember the exact number of days, but it was about 10 or 15, I think it was about 10 days after she was required to appear. So what she was doing, your Honor, was using the inadvertent delay in your issuing a written order as a means of trying to escape having her deposition taken. So thereafter, we file the motion for the status conference just so you could -- rather than going through all the mechanics again, asking your Honor to just simply reset dates and extend the pre-

trial and trial dates and discovery cut-off dates. The point being, that when she requested a seven-week continuance, that would have put her right up to the discovery cutoff date, which I am convinced, your Honor, after having dealt with plaintiff on all these occasions was her way of attempting to avoid having her deposition taken, because somehow she would be able to get around having to appear before the April 1 discovery cut-off date. So then the motion for the status conference was set. I was notified by your clerk to send in a proposed order, I did so. I served a copy of that proposed order on plaintiff; that copy has never come back. So, plaintiff had notice as of the first week in April that in fact there was a proposed order which was requiring her to appear on April 19th and 20th for her deposition, if it was signed by you. Thereafter, I received on April 11th, your signed and executed on April 7th.

I served copies on her; one, express mail, so I would give her as much notice time as possible; I also sent it certified mail, anticipating that we would have a problem in that she would say she never received it if I sent it regular mail. At the time on April 8, she had mailed a notice of change of address to us, which I did not receive until the 15th a week later. The reason for that, your Honor, is that quite frankly she sends everything to me certified mail, restricted delivery, which requires my personal signature, and I wasn't available to sign it until the 15th of April. The deposition had been set for the 19th, according to your Order, so I again to the new address sent it certified mail; sent it express mail. Included within our reply papers are the copies of those envelopes, I have the actual envelopes here if you would like to inspect them. It is clear there were several attempts prior to the date of her deposition to appear, they all came back un-

claimed, but interestingly, your Honor, the thing that I want you to note is they were sent by separate envelopes, proofs of service of the fact that we had served this order on her so that we could file it with the Court, those were sent by regular mail to the same address, those proofs of service, which are on file state that we had served on her on such and such a date an order signed by Judge Rafeedie on April 7th, clearly knew it had to relate to the proposed order that she had earlier received, those proofs of service have never come back. So what she did, your Honor, she saw that the Court was going to entertain a proposed order, and quite honestly avoided taking anything from the Court. I think what she has said here earlier is panamount to an admission that she knew that envelopes were coming and contained something, but they weren't from the Court; therefore she wasn't going to honor them. Your Honor, I think that the coup de gra

is that on the 19th when she did not appear for her deposition, in the presence of the court reporter and Cynthia Martinez, who is staff counsel for the defendant, while we were waiting for her to show up, when she was 45 minutes late, we called her home resident telephone number, which is area code (805) 985-2221, she answered the telephone, I recognized her voice, your Honor. I said, Mrs. Monzello. She said, who is calling. I said this is Jim Zapp calling. She said I had a wrong number and hung up. I called that number twice within the next four minutes, let it ring 10 to 12 times each time and nobody would answer the telephone. Your Honor, she had purposely avoided, she has done everything conceivable to avoid having her deposition taken, to make a mockery of these proceedings. She has disparaged this Court, she has disparaged other members of the judiciary. She has repeatedly made disparaging references to members of management of this

company. The defendant has been put to total unnecessary expense. She has never, by the way, your Honor, even after receiving any of the signed orders made any attempt to contact me to set up a date where we could voluntarily take her deposition. She has never attempted to pay the $500 in sanctions, which has been ordered against her as early as February 1, and then in signed order on February 9. Your Honor, quite frankly, she is just making a mockery of this whole procedure. In all my years of practice, I have never been exposed to this kind of a situation, and while I understand that a dismissal is a harsh thing to be imposed upon someone, under these circumstances, your Honor, I don't think there is any alternative. That's the chronology, your Honor.

THE COURT: Mrs. Monzello, do you wish to say anything more?

MRS. MONZELLO: I am not here to discuss anything with the defendant; I am here to

discuss with the Court, anything the Court has to ask me or that I want to speak to the Court.

THE COURT: Do you have anything you wish to say to the Court before I rule on this?

MS. MONZELLO: I never disobeyed an order of the Court. I did not receive a signed order from the Court as of today. I applied -- I put in a reply on the 18th, and is that in my record?

THE COURT: Do you realize that writing some of the things that you have written here and submitted to the Court are the types of things that can subject you to contempt of Court?

MS. MONZELLO: The defendant brought up the subjects, I did not. I only answered what he brought up.

THE COURT: Well, you state here for example on page 6 of your affidavit: Of course if a Judge is an "intellectual midget" he will not be able to handle such

a motion. This is referring to your motion to have your husband appointed as co-counsel.

MS. MONZELLO: That's right.

THE COURT: Does that refer to this Court?

MS. MONZELLO: Yes, it does.

THE COURT: In other words, you are calling this Court an "intellectural midget?"

MS. MONZELLO: Well, that is your intrepretation.

THE COURT: That's what it says.

MS. MONZELLO: Well, everybody has their own interpretation.

(Pause.)

MS. MONZELLO: Did you receive my reply to his answer on May the 18th; is that in the record?

THE COURT: Yes.

MS. MONZELLO: I asked for a reconsideration on these items.

(Pause.)

THE COURT: I am looking for some of this other language that was contained in here.

MS. MONZELLO: Right.

THE COURT: Which I want you to explain to me.

MR. ZAPP: Your Honor, if I could be of assistance, you are looking at her original memorandum?

THE COURT: Yes.

MR. ZAPP: If you were to review page 8 of her affidavit, paragraph (c) lines 14 on, where she talks about referring to myself and to you, presumably:

This High Priest of the legal priesthood -- "a cult" -- James A. Zapp, Esq. -- my -- my -- my -- whew -- moans, groans, grunts, snorts and chants out of both sides of his mouth and blows it out his ass at the same time chanting that plaintiff has committed the unpardonable sin of moving to disqualify that peer of integrity -- that mountain of physical blubber -- that intellectual midget -- that Prince of Clowns -- Judge Edward Rafeedie.

THE COURT: Those are your statements,

ma'am?

MS. MONZELLO: That's right.

THE COURT: You realize you could get yourself put in jail for making statements like that?

MS. MONZELLO: I answered the subject he brought up; I did not bring it up.

THE COURT: He brought up that subject?

MS. MONZELLO: That's right.

MR. ZAPP: I raised that subject, your Honor, merely to point forth the numbers of frivolous motions that have been filed by this plaintiff, and the expense and waste of resources that has been expended.

THE COURT: I see you have also insulted the President here, and the Attorney General. And that is due to the fact they had something to do with my appointment to the Court; is that it?

MS. MONZELLO: I have nothing to say about that.

THE COURT: Let's see what else you have said here.

(Pause.)

THE COURT: You quote on page 10, you state in quote: In non-legal lingo Judge the question the plaintiff has to answer for herself is -- are you their boy?

MS. MONZELLO: Continue.

THE COURT: The record shows that - quote - in non-legal lingo Judge the question the plaintiff has to answer for herself is -- are you their boy? That's repeated.

MS. MONZELLO: Continue, the rest of it.

THE COURT: Plaintiff is compelled to answer that question this way: Plaintiff does not really know whether you are or whether you are not. When she takes into consideration the fact that on the day, October 13, that the defendant filed his answer the case was transferred to you -- apparently someone thinks you are and she does not want you. End of quote.

MS. MONZELLO: Um-hmm.

THE COURT: You see nothing wrong with that?

MS. MONZELLO: No. That was in my motion to disqualify, that was denied me. So that is just part of the record.

THE COURT: Now, according to this you have determined that I was not qualified for this job when I was appointed, that is alleged; is that right?

MS. MONZELLO: That's right.

THE COURT: And you still believe that?

MS. MONZELLO: Yes, I do.

(Pause.)

MS. MONZELLO: I always speak the truth as I see it.

THE COURT: What are your reasons for saying that? Do you know what my background and qualifications are?

MS. MONZELLO: That's my opinion.

THE COURT: What is it based on?

MS. MONZELLO: On the way I have been treated.

(Pause.)

THE COURT: Plaintiff realizes you are taking your "on the job" training.

MS. MONZELLO: That's right.

THE COURT: Plaintiff objects to being used as a "guinea pig" in your training.

MS. MONZELLO: Go ahead.

THE COURT: She also is aware that Zapp is only a deposition specialist -- known in the legal trade as a "hatchet man" and that he doesn't know his "ass" from a hole in the ground about Federal Procedure.

MS. MONZELLO: Right.

THE COURT: He too is taking his on the job training in this case. Plaintiff is going to send both of you a "bill" for this "special training" you two clowns are getting in this case.

MS. MONZELLO: That's the truth.

THE COURT: Plaintiff points out that the judge to whom the motion was referred was

a judge with -- "the French Connection" Cynthia Hall -- nominated by President Reagan, et cetera. The French Connection I take it is the Attorney General?

MS. MONZELLO: Yes. He was on the board of the Automobile Club of Southern California, who is the defendant in this case and had discriminated against me because of my age.

THE COURT: All right. Well, I think that is sufficient --

MS. MONZELLO: Thank you.

THE COURT: -- to establish the character of this.

MS. MONZELLO: Did you make any decision on my reconsideration for my protective order and sanctions and the three things I put in my reply of May 18th?

THE COURT: That will not be necessary since I am going to dismiss this case.

MS. MONZELLO: Well, ah -- could you give your order?

THE COURT: For your willful failure to comply with the Rules of the Court, with the orders of the Court, for your willful and deliberate effort to avoid having your deposition taken after having many opportunities to do so. This case is ordered dismissed.

The case is ordered dismissed without prejudice. You may file a motion to have the case reinstated upon paying all of the sanctions that have been previously imposed upon you and upon agreeing and stipulating to the taking of your deposition, without any conditions preceding.

MS. MONZELLO: Thank you.

THE COURT: Did you understand the Order?

MS. MONZELLO: Yes, I understood the order.

THE COURT: All right.

MR. ZAPP: Your Honor, if I might. We had asked for attorney's fees in connection with having to bring this motion,

which was necessitated by plaintiff's conduct.

THE COURT: Yes. Attorney's fees are ordered in the sum of $500.

MR. ZAPP: So, this is in addition --

THE COURT: In addition to what has previously been ordered.

MR. ZAPP: So then plaintiff has $1000 to pay; is that correct, your Honor?

THE COURT: That's correct.

MR. ZAPP: Thank you, your Honor.

MS. MONZELLO: Thank you.

MR. ZAPP: Will the Court send out the order, your Honor?

THE COURT: I want you to prepare and submit a proposed order.

MR. ZAPP: Fine. Thank you, your Honor.

END OF TRANSCRIPT

C E R T I F I C A T E

I hereby certify that I am a duly appointed qualified and acting Official Court Reporter of the United States District Court for the

Central District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on Monday, May 23, 1983, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this _____ day of _____ 1983.

Michael A. Peterson

Official Court Reporter

U. S. Department of Labor

Receipt for Payment of Back Wages

As computed or approved by the Wage And Hour Division Employment Standards Administration U. S. Department of Labor

I, Esther C. Perkins hereby acknowledge receipt of payment in full from Automobile Club of So. California, P. O. Box 2890 Terminal Annex, L. A. CA 90051 for the period beginning with the workweek ending

4/28/80 through the workweek ending 5/11/80 of unpaid wages due me (as shown in the column to the right under the Act(s) indicated in the marked box(es):

(x) The Fair Labor Standards Act

Gross amount $537.90

Legal deductions 162.72

Net amount received 375.18

NOTICE TO EMPLOYEE. - Your acceptance of back wages due under the Fair Labor Standards Act means that you have given up any right you may have to bring suit for such back wages under Section 16(b) of that Act. Section 16(b) provides that an employee may bring suit on his own behalf for unpaid mimimum wages and/or overtime compensation and an equal amount as liquidated damages, plus attorney's fees and court costs. Generally, a 2-year statute of limitations applies to the recovery of back wages. Do not sign this receipt unless you

have actually received payment of the back wages due.

Signature of Employee Esther C. Perkins

Date 6/18/81 Address 6431 Geyser Ave.

Reseda, Calif. 91335

EMPLOYER'S CERTIFICATION

To Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor

I hereby certify that I have on this (date) PAID VIA WAGE-HOUR paid the above-named employee in full covering unpaid wages as stated above.

Signed Unsigned Title No Title

(Employer or authorized representative)

PENALTIES ARE PRESCRIBED FOR FALSE STATEMENTS AND FALSE RECEIPTS

Form WH-58 (Rev. 6/71)

- -

Check from the Automobile Club of Southern California for Back Wages

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

No. 749206

Pay To The Order Of Check Date

ESTHER C. PERKINS 6-11-81

442 442 OT 66490 Check Amount

$*375.18**

(Replacement of check dated 4/30/81)

Figueroa & Adams Branch

SECURITY PACIFIC NATIONAL BANK

PAYROLL ACCOUNT

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

L K Desmond

- -

Letter From Automobile Club of Southern California To the Employment Development Department

Automobile Club of Southern California

October 16, 1980

Employment Development Department

Unemployment Insurance Office #011

8211 Remmet Avenue Canoga Park, CA 91304

SS# 302 12 3856

Claimant: Esther C. Perkins

Type of Claim: 1101C

Date Claim Filed: 10-5-80

The following is submitted in response to the above claim:

Period of Employment:	1-5-70 to 4-8-77
Classification:	Service Representative
Office Last Worked:	West Valley District Office
Rate of Pay:	$717.00 per month
In Lieu of Notice Pay:	None
Reason for Separation:	Dissatisfied with Work Environment

FACTS:

Claimant elected to take early retirement rather than submit a statement from her doctor to us concerning her ability to return to work.

Please direct further correspondence to my attention.

Emily McGlocklin

Agency Relations Consultant

Personnel Operations

(213) 741-4006

Employer Account #001 0322

EM:gb

Determination Ruling of

State of California

Employment Development Department

NOTICE OF

(X) DETERMINATION/RULING

Date 10-29-80 (x) mailed

E. Perkins

6431 Geyser Avenue

Reseda, CA 91335

Field Office No. 011

SSA No. 302-12-3856

Claimant's Name E. Perkins

Benefit Year Began 10-05-80

EMPLOYER You questioned claimant's right

to benefits under Code Section(s) 1256

We have considered all the facts and found the claimant eligible for the reasons stated below

---

REASON FOR DECISION:

You discharged the claimant for not submitting a doctors release. Evidence indicates that she complied with your request. Therefore it must be held she was discharged/forced to accept early retirement for other than misconduct.

You are receiving a pension based on your prior work. A pension is defined as the receipt by an individual or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of an individual. Your weekly unemployment insurance benefit is reduced by the weekly amount of your pension.

Important: For explanation of the law, appeal rights, and reporting requirements see reverse.

Automobile Club of So. Calif.

P. O. Box 2890 Terminal Annex

Los Angeles, Calif. 90051

Any appeal from this notice must be filed on or before 11-18-80 to be timely. The appeal may be filed in person or by mail.

R. Holloway/sw

Department Representative

State of California

Employment Development Department

8211 Remmet Ave.

Canoga Park, CA 91304

(213) 348-9063

Part V/Wednesday, January 5, 1983

From: The Los Angeles Times

Host Jack Wrather greets President and Mrs. Reagan at annual New Year's Day party.

Jody Jacobs

How the Reagans Spent New Year's Day

BEST AVAILABLE COPY

The desert's newest private enclave, the Vintage Club at Indian Wells, got off to a great start on New Year's Day when the President and First Lady Nancy Reagan showed up for a party hosted by their good chums Jane and Justin Dart, Bunny and Jack Wrather and Virginia and Holmes Tuttle.

The ladies sparkled in the kind of finery they wear to parties in each other's homes. The men wore open-neck sports shirts (Earle Jorgensen was one of the exceptions), a comfortable alternative to the more constricting starched dress shirts and black ties that they'd worn the night before at Sunnylands, the desert estate of former Ambassador Walter Annenberg and his wife Lee, where they'd welcomed in the New Year at a dinner dance. For the Vintage Club party, the President chose to be different. He wore a plaid jacket and turtleneck sweater.

It's now a tradition that the Darts and the Wrathers host the New Year's Day

party. This year the Tuttles joined in as hosts, but unfortunately had to miss the party. (Just before New Year's Eve Tuttle was taken ill and the couple returned to their home in Santa Barbara.)

Vintage Club President Nick Humphrey and Vice President Joe Seiger were at the door to welcome the VIP guests, including Atty. Gen. and Mrs. William French Smith; the Rev. Donald P. Merrifield, president of Loyola Marymount; Mr. and Mrs. William P. Clark (he's the President's assistant on national security affairs); Charles Z. Wick head of the U. S. Information Agency, and his wife Mary Jane; the ambassador to Belgium and Mrs. Charles Price; the President's envoy to the Vatican and Mrs. William A. Wilson; Standard Oil biggie, John Swearingen and his irrepressible wife Bonnie; the U. S. Ambassador to Mexico, John Gavin and his actress wife, Connie Tower; Dolores

and Bob Hope.

There was a gathering of the clan over cocktails before everyone moved into the club's dining room for a Bavarian feast and the music of Tony Rose (Palm Spring's favorite music maker) and his orchestra. (No dancing this night.)

Informal was the key word for this compatible gathering of friends.
(The article continues)

Part V/Tuesday March 8, 1983

From: The Los Angeles Times

Promenading at the Costume Council's Masked Ball

Masks for everyone-from left, Mrs. W. Clark Smith, Mr. and Mrs. William French Smith

By JODY JACOBS, Times Society Editor

Clusters of guests huddled under striped umbrellas as they arrived at the Costume

BEST AVA

Council's Le Bal Masque, waited to get into the new exhibition at the County Museum of Art, made their way to the Ahmanson Gallery's atrium for dining and dancing and finally en route home waited for cars on Wilshire Boulevard. The vignettes as seen through Saturday night's rain and dark made Bill Frye reflect from his safe spot under the big white tent that it looked like a scene from "The Umbrellas of Cherbourg."

(The article continues)

- -

FROM: THE SANTA MONICA OUTLOOK

LOCAL AND REGIONAL

Rafeedie wins OK of Senate

By Will Thorne

Santa Monica Superior Court Judge Edward Rafeedie has won U. S. Senate confirmation of his appointment to the

LABLE COPY

U. S. District Court in Los Angeles.

Duke Short, a consultant to the Senate Judiciary Committee, said the confirmation came on a voice vote on the floor just before the Senate recessed Wednesday afternoon.

Rafeedie, notified at his Malibu home of the Senate action, said he was "very gratified" by the ac ion and the support of those who had backed his nomination.

"You don't get an appointment like this without a lot of support and help from a lot of people," he said. "And having been through the process, it creates a strong sense of obligation to perform so as to never disappoint those people.

"In other words, I feel I owe those people something and what I owe them is to be the most outstanding federal judge I can be."

Rafeedie particularly mentioned U. S. Sen. S I. Hayakawa, who recommended him for the nomination; Hayakawa's screening

committee and its chairman, Fred DeBernardo; President Reagan, for the actual nomination, and the Senate Judiciary Committee for its approval.

He said he expects Reagan to sign his formal commission within the next several days. He will then resign his Superior Court judgship and take the federal oath.

"I'm going to shoot for either the first of October or certainly within the first week or two of October," he said.

Taking the oath will allow Rafeedie to "go to work" but will be followed later by a formal investiture.

His departure will precede a testimonial dinner being planned by the newly formed Friends of Judge Rafeedie, organized by employees of the Santa Monica courthouse, the nearby Santa Monica City Hall and Santa Monica Police Department.

Victor Alferos, an identification officer with the Santa Monica Police Department said the dinner will be held Nov. 12

at the Airport Marriott Hotel, 5855 W. Century Blvd., Westchester.

Alferos said a series of presentations of plaques and awards to the judge, such as letters from the White House, from the Los Angeles County Board of Supervisors and from the Santa Monica Chamber of Commerce, will be made during the program.

The dinner will be open to the public and costs $35 per person. Reservations may be made by calling 393-5882.

- -

Local Rule 7(a)

(a) Findings, Judgments, et cetera: Unless the Court otherwise directs, no document governed by this rule will be signed unless opposing counsel shall have endorsed thereon an approval as to form, or shall have failed to serve and file with the Clerk, within five days after service of a copy thereof, as shown by endorsement on the original or by affidavit of service a statement of

objections to form and the grounds thereof.

Local Rule 14. ORDERS, JUDGMENTS, FINDINGS OF FACT AND CONCLUSIONS OF LAW

14.7 Endorsement of Counsel - Unless the Court otherwise directs, no document governed by Local Rule 14 will be signed by the judge unless either opposing counsel shall have endorsed thereon an approval as to form, or the time for objection has expired.

Fed R Civ P 38(a)

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

BEST AVAILABLE COPY

Complaint For Age Discrimination In Employment

Document #1

FILED

SEP 22 1982

Clerk U. S. District Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Esther C. Monzello	Complaint For Age
Plaintiff	Discrimination in
vs	Employment
Automobile Club of So. Calif.	82 4930
Defendant	MML (mcx)

This action is brought under the Age Discrimination In Employment Act of 1967 As Amended. U. S. Code Title 29 Chapter 14.

The plaintiff Esther C. Monzello was employed as a Service Representative of

the Automobile Club of Southern California. At the time of the act of age discrimination her place of employment was Woodland Hills, Calif. She was single and her name was Esther C. Perkins. Subsequent to her being forced to accept early retirement she was married on April 6, 1981 and her name changed to Esther C. Monzello. Although her records are in the name of Esther C. Perkins the plaintiff will be referred to as Esther C. Monzello.

A "right to sue" was issued by the Equal Employment Opportunity Commission. This "right to sue" was received on June 29, 1982. This complaint is filed within the 90 day period authorized by law.

The plaintiff Esther C. Monzello formerly Esther C. Perkins is within the protected age group. She was born on January 18, 1924. At the time of the act of discrimination May 27 thru June 2, 1980 she was over 56 years of age.

The act of discrimination occurred during the period May 27 thru June 2, 1980.

This act of discrimination consummated itself when on June 2, 1980 at the age of 56 years 4 months and 13 days she was forced to accept early retirement from her position as a Service Representative, salary $1134.00 per month, and accept an annuity of $162.80 per month which expires on January 18, 1986 her 62nd birthday.

On Tuesday May 27, 1980 the plaintiff reported to work and went to her desk.

Mr. Stevenson came to her desk.

He said to come into his office.

He told her to sit down.

He introduced her to Lorraine Dowell, Asst. Manager, Agency Relations.

He said she already knew Bill Meyers, Regional Travel Manager, Region 8.

He said he had something to read to her.

He started to read charges against her.

As he read each charge she answered "false".

He said it was not conduct the Auto Club could accept.

He said he was asking for her dismissal.

He said he had her check in his desk drawer.

He was asking her to accept it.

Lorraine Dowell echoed his sentiments to take the check.

She refused to take the check.

She said with her background and a raise coming up she would not accept dismissal on false charges.

She asked if there was a place she could refute the charges.

Both Stevenson and Dowell said there was no place.

Miss Dowell said she should obey her manager at all times.

When he told her to go on sick leave she should have gone.

Plaintiff said she had asked him to give her a note stating the reason for leaving, to date it and sign it and he refused.

Mr. Stevenson said if she would get a Doctor's statement saying she was able to do all her work the charges would be dropped and she could return to work.

Lorraine Dowell said yes just get a Doctor's statement and you can return to work.

She told Mr. Stevenson she had just been to her Doctor the week before and got a final clearance on her health.

He said to return and get another statement.

Lorraine Dowell said if she wanted to take early retirement it would be all right and the charges would be dropped.

Plaintiff asked Meyers what he thought about what was going on.

He said he did not know.

She then told him she had been

ostracized on the trip and also there was heavy drinking on the trip.

He said he would investigate it.

Mr. Stevenson said she would have to go on sick leave until June 10 in order to get the Doctor's statement.

She asked that she be put on a Manager's leave as she was not sick.

Both Mr. Stevenson and Lorraine Dowell insisted she must go on sick leave to obtain the Doctor's certificate.

She left the office and called Mr. Monzello to pick her up.

She was waiting in front of the Claims Section and Mr. Stevenson approached her with a piece of paper which he handed her.

She left the Club and went home.

She went from home to Dr. Goodman's office, her personal physician for 20 years.

He gave her a Doctor's statement stating she could perform her duties with

restrictions.

On Thursday, May 29, 1980 she entered Mr. Stevenson's office and gave him her Doctor's statement.

He picked up a phone and dialed a number.

He spoke softly into the phone so she could not hear him.

He hung up the phone.

He made a disrespectful remark about her doctor.

He said the statement was not acceptable.

She had been given the option of being fired or taking early retirement. She decided to take a forced early retirement.

Since she is in the protected age group and

Since her work was adequate and

Since the Automobile Club stook to gain financially by

Forcing her an older employee who

Had a higher salary rating than younger employees and

Who was scheduled for a $200 per month raise in July to

Accept a forced early retirement

She was discriminated against her because of her age and

The reasons concocted to coerce her into accepting a forced early retirement are

A pretext to discriminate against her because of her age.

Wherefore plaintiff demands:

1. That plaintiff be granted a trial by jury.

2. That Defendant be required to pay plaintiff back pay of $50,000.

3. That Defendant be required to pay plaintiff $500,000 for pain, suffering and mental anguish.

4. That Defendant be required to pay plaintiff reasonable attorney fees.

5. That Defendant be required to pay

plaintiff the costs of this action.

6. That the plaintiff have such other relief as is just.

Esther C. Monzello

Esther C. Monzello

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Pursuant to the Local Rules Governing Duties of Magistrates, Magistrate James W. McMahon has been designated to hear discovery motions in the within action at the discretion of the assigned Judge.

Upon the filing of a discovery motion, the motion will be presented to the United States District Judge for consideration and may hereafter be referred to the Magistrate for hearing and determination.

The Magistrate's initial should be used on all documents filed with the Court so that the case number reads as follows:

CV - 82 4930 MML (Mcx)

NOTE: A COPY OF THIS NOTICE MUST BE SERVED WITH THE SUMMONS AND COMPLAINT ON ALL DEFENDANTS

M-9M (8/79) NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE

Demand For Jury Trial

Document #4

FILED

1982 SEP 29 AM 8:42

Clerk U.S. District Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Esther C. Monzello, Plaintiff

vs

Automobile Club of So. Calif., Defendant

CV 82-4930 MML(Mcx)

Demand For Jury Trial

1. A demand is made for a trial by jury in the case of the Plaintiff Esther C. Monzello vs Defendant Automobile Club of Southern California.

Esther C. Monzello

Esther C. Monzello

Plaintiff

Acting Pro Se

Document #60

Order by Judge Hall - January 3, 1983

ORIGINAL

FILED

JAN 3 1982

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO,

Plaintiff

vs

AUTOMOBILE CLUB OF SO. CALIFORNIA,

Defendant

No. CV 82-4930 ER

O R D E R

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APR 20 1984

CLERK U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

U.S.D.C. No. CV 82-4930 ER (Mcx)

(C.A. No. 83-6004)

ESTHER C. MONZELLO

Plaintiff & Appellant

vs

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,

Defendant & Appellee

OPPOSITION BY DEFENDANT AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA TO MOTION TO SETTLE DIFFERENCES AS TO ACCURACY OF RECORD AND TO CONFORM RECORD

Document #131

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UNITED

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CLERK U. S. DISTRICT COURT
NTRAL DISTRICT OF CALIFORNIA

STATES DISTRICT COURT

DISTRICT OF CALIFORNIA -CENTRAL

) U.S.D.C. No. CV 82-4930 ER (Mcx
)
) (C.A. No. 83-6004)

ESTHER C. MONZELLO

Plaintiff & Appellant

vs.

AUTOMOBILE CLUB OF
SOUTHERN CALIF.,

Defendant & Appellee

OPPOSITION BY DEFENDANT AND APPELLEE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA TO MOTION TO SETTLE DIFFERENCES AS TO ACCURACY OF RECORD AND TO CONFORM RECORD TO THE

EDITOR'S NOTE

PAGES D-122 thru D-151 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Document #129

[redacted]

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SOUTHERN CALIFORNIA

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APR 20 1984

CLERK U. S. DISTRICT COURT
NTRAL DISTRICT OF CALIFORN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTHER C. MONZELLO,

Plaintiff and
Appellant

vs

AUTOMOBILE CLUB
OF SOUTHERN
CALIFORNIA,

Defendant and
Appellee

NO. CV 82-4930 ER (Mcx)

(C.A. No. 83-6004)

OPPOSITION BY DEFENDANT AND APPELLEE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA TO MOTION TO SETTLE DIFFERENCES AS TO ACCURACY OF RECORD AND TO CONFORM RECORD TO THE TRUTH

Document #135

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FILED

APR 26 1984

CLERK U. S. DIST. CT.
CENTRAL DIST. OF CALIF.
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

No. CV 82-4930-ER

ESTHER C. MONZELLO,
Plaintiff and
Appellant

vs

AUTOMOBILE CLUB OF
SOUTHERN CALIFORNIA,
Defendant and Appellee

ORDER DENYING PLAINTIFF'S MOTION TO ALTER RECORD

D-123

CONSTITUTION

of the

UNITED STATES OF AMERICA

HISTORIC DOCUMENTS ANTEDATING THE CONSTITUTION

DECLARATION OF INDEPENDENCE - 1776

IN CONGRESS, JULY 4, 1776, THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature, and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident that all men are created equal, that

all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute a new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for Light and transcient causes; and accordingly all experience hath shown, that mankind are most disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a

long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. -- Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present K'ng of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

(Note: Facts not applicable will not be quoted:)

For depriving us in many cases, of the benefits of Trial by Jury.

We, therefore, the Representatives of the United States of America, in General

Congress, Assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare. That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States they have full power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

End

Constitutional Provisions

Article VI

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT 5

(Criminal actions - Provisions concerning - Due process of law and just compensation clauses.)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land of naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence

to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

(Rights of the accused.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

AMENDMENT 7

(Trial by jury in civil cases.)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 14

Section 1. (Citizenship-Due process of law - Equal Protection.)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2 Not applicable

Sec. 3 Not applicable

Sec. 4 Not applicable

Sec. 5 (Power to enforce amendment.)
The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 United States Code, Section 455.

455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
(b) He shall also disqualify himself in the following circumstances:
(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding:
(2) Where in private practice he served as a lawyer in the matter in controversy, or a lawyer with whom he previously

practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding, or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages

of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceedings could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a) waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

28 USCS 44 Standards and Guidelines for the Merit Selection of United States District Judges

Ex. Or. No. 12097 of November 8, 1974; 43 Fed Reg 52455 provided in part;

"1-1 Nomination of District Judges

"1-102 The Attorney General shall assist the President by recommending to the President persons to be considered for appointment who are qualified to be District Judges and by evaluating potential nominees. The Attorney General shall receive recommendations of such persons from any person, commission or organization (See this rule for further clarification of how these judges should be selected).

28 United States Code, Section 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by

his appointment --

(1) all powers and duties conferred or imposed upon United States commissioners by law or by Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, impose conditions of release under section 3146 of title 18, and take acknowledgments, affidavits, and depositions; and

(3) Not applicable

(b) (1) Notwithstanding any provision of law to the contrary --

(A) A judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which

relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a Judge of the Court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve

and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

29 United States Code, Section 621. Congressional statement of findings and purpose.

(a) The Congress hereby finds and declares that --

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this Act (29 USCS # 621 et seq/) to promote employment of older persons based on their ability rather than age; to prohibit arbi-

trary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

(Dec 15, 1967, P. L. 90-202, ⁋2, 81 Stat. 602)

29 United States Code, Section 626(c)
Chapter 14, Section 7(c)

Sec. 4. (a) Section 7(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(c) is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph: Trial by jury.

"(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this Act, regardless of whether equitable relief is sought by any party in such action"

29 United States Code, Section 627

Notices to be posted

Every employer, employment agency, and labor organization shall post and keep posted in conspicous places upon its premises a notice to be prepared or approved by the Secretary setting forth information as the Secretary deems appropriate to effectuate the purposes of this Act (29 USCS #621 et seq.) (Dec. 15, 1967, P. O. 90-202, #8, 81 Stat 605.)

18 United States Code, Section 1001

Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false

fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

June 25, 1948, c. 645, 62 Stat. 749

From EEOC Compliance Manual

#529 - 14.9 Fact Finding Conference

(a) Authority - The authority for fact finding procedures is set forth at #1601.15(c) and #1626.15(a) of EEOC's procedural regulations. (b) Purpose of the Fact Finding Conference: Fact finding procedures are intended to insure the expeditious investigation of individual harm and limited class disparate treatment charges (see Volume II, #604). The fact finding conference is primarily an investigative forum intended to further define the issues, determine which elements are undisputed, clarify disputed issues and evidence, and determine what other evidence may be necessary.

Fact Finding Conference Procedures

This Fact Finding Conference is being held pursuant to Sections 1601.15, 1620.19 and 1626.15(a) of the Commission's Procedural Regulations. The purpose of this conference is to assist the Commission in an investigation of the practices alleged in the charge. The Commission's Equal Opportunity Specialist ("EOS") will control and direct the conference. Witnesses will not be present during the conference except when presenting their own testimony. Each witness will wait outside the conference room until called to provide information on the charge. Other Commission employees may be non-participating observers.

The EOS will take the following steps during the conference. First, the charge will be read or summarized and the specific allegations discussed. The Charging Party will then, without interruption, present his/her views on the events which

led to the charge. The Respondent will then be given an opportunity to answer the charge and present his/her views without interruption.

The parties present should address all questions and statements to the EOS, resist interrupting other parties, and wait until the person speaking is finished.

If you want to have a particular question asked, you should request that the EOS pose it. If the question is relevant, it will be asked.

If Respondent or Charging Party is accompanied by an attorney at the conference, the attorney may participate in the conference only as an advisor to the client. The Charging Party or Respondent should state his or her position directly rather than have the attorney speak on his or her behalf. No cross examination by attorney(s) of any person present will be permitted.

If either of the parties suggests a recess to discuss settlement of the charge,

the recess will be called by the EOS. Where settlement has been deemed to be appropriate, the EOS may also suggest a recess to consider settlement. The EOS may conduct settlement discussions separately with each party. If the attempt fails, the EOS will reconvene the conference and continue the investigation. When all immediately available information has been gathered and it is apparent that either information needs to be further analyzed or more information will have to be obtained before a finding can be made, the EOS will state that Charging Party and Respondent will be contacted after further analysis of the evidence.

Transcript of January 3, 1983

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE CYNTHIA HOLCOMB HALL, JUDGE PRESIDING

- - - -

ESTHER C. MONZELLO,

Plaintiff

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,

Defendant

NO. CV 82-4930 ER

- - - -

C E R T I F I C A T E

I hereby certify that I am a duly appointed, qualified and acting Official Court Reporter of the United States District Court for the Central District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause had on Monday, January 3, 1983, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 12th day of July

Lorraine M. Oakley

LOS ANGELES, CALIFORNIA; MONDAY, JANUARY 3, 1983; 10:00 A.M.

-ooo-

(Other Court matters.)

THE CLERK: Item No. 25: CV 4930-ER; Esther C. Monzello vs. Auto Club of Southern California.

Counsel, please state your appearances.

MR. ZAPP: Good morning, your Honor. James A. Zapp for the defendant Automobile Club of Southern California.

MS. MONZELLO: Plaintiff pro se, Esther C. Monzello, your Honor.

THE COURT: All right. I have read your motion, Ms. Monzello, and I do not find a basis in it for a disqualification under the statute.

Do you wish to be heard further?

MS. MONZELLO: I stated in the motion the facts and the relationships that would make it impossible for Judge Rafeedie to be unbiased in this case.

THE COURT: I find them to be inadequate.

MS. MONZELLO: That is all?

THE COURT: Yes. Unless you want to say something further.

Do you wish to be heard?

MR. ZAPP: No, your Honor.

MS. MONZELLO: I object to him being heard because, according to the Federal Rules of Civil Procedure --

THE COURT: What is your problem? He doesn't wish to be heard anyhow.

Thank you very much. That will be all.

(End of proceedings)

- - - - -

The following is extracted from:

Response By Appellee to Appellant's Docketing Statement - dated July 13, 1983 - filed with 9th Circuit.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTHER C. MONZELLO,	CASE NO. 83-6004
Appellant	U.S.D.C. No. CV
vs.	82-4930 ER
AUTOMOBILE CLUB OF SO.	

CALIFORNIA

Appellee

RESPONSE BY APPELLEE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA TO APPELLANT'S DOCKETING STATEMENT

Page 1 - lines 18-28 Not applicable

Page 2 - lines 1 - 8 Not applicable

Page 2 line 9 - With respect to Judge Rafeedie's aforesaid order of dismissal, Appellee notes that Judge Rafeedie entered on May 31, 1983, two separate orders dismissing plaintiff's action. One order did not specify in paragraph 3 thereof a date certain by which plaintiff's action would be deemed dismissed with prejudice if she had not previously filed a motion to have her complaint reinstated. The other order did specify such a date certain, namely June 30, 1983. Appellee respectfully submits that this second order, which is attached to Appellant's docketing statement as pages 9 to 11 of Exhibit "A"

is the applicable order to Appellant's Appeal herein.

Dated: July 13, 1983.

Respectfully submitted,

MARK W. ATKINSON

JAMES A. ZAPP

PAUL, HASTINGS,

JANOFSKY & WALKER

By: _____

James A. Zapp

Attorneys for Appellee

Office-Supreme Court, U.S.
FILED
FEB 19 1985
ALEXANDER L. STEVAS,
CLERK

(3)

No. 84-1174

IN THE

Supreme Court of the United States

OCTOBER TERM 1984

ESTHER C. MONZELLO,
Petitioner,

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED*

Did the United States Court of Appeals for the Ninth Circuit properly conclude:

1. That the magistrate and the district court did not abuse their discretion in issuing the following orders directing petitioner to appear for her deposition and produce documents:

   a. Magistrate McMahon's order of February 10, 1983;

   b. Judge Rafeedie's order of March 18, 1983; and

   c. Judge Rafeedie's order of April 7, 1983.

2. That the district court did not abuse its discretion in dismissing petitioner's action for her wilful and repeated refusals to comply with the district court's discovery orders.

3. That Judge Hall did not abuse her discretion in denying petitioner's motion to disqualify Judge Rafeedie.

4. That petitioner's motions for an evidentiary hearing on allegations of falsification of the record by Judges Hall and Rafeedie should be denied.

PARTIES TO THE PROCEEDINGS

Petitioner Esther C. Monzello ("Monzello") and respondent Automobile Club of Southern California ("Automobile Club") are the only parties to these proceedings.

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*These questions have been restated from those set forth in the Petition.

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No. 84-1174

IN THE

Supreme Court of the United States

OCTOBER TERM 1984

ESTHER C. MONZELLO,
Petitioner,

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

The following opinions and judgments delivered by the lower courts are the only ones relevant to the present proceedings:

1. Order by Judge Hall denying petitioner's motion to disqualify Judge Rafeedie, dated January 3, 1983 (Appendix at A-13 to A-15);[1]

2. Order Re Discovery Matters by Magistrate McMahon, filed February 10, 1983 (Appendix at D-41 to D-48);

[1]All references are to the "Appendix to Petition for a Writ of Certiorari" filed by petitioner.

3. Memorandum Opinion and Order by Judge Rafeedie, entered March 18, 1983 (Appendix at D-48 to D-59);

4. Order by Judge Rafeedie, filed April 7, 1983;

5. Order Re Dismissal of Action and Award of Reasonable Attorney's Fees by Judge Rafeedie, entered May 31, 1983 (Appendix at A-9 to A-12); and

6. Memorandum Opinion by the United States Court of Appeals for the Ninth Circuit, filed August 8, 1984 (Appendix at A-24 to A-36).

RELEVANT STATUTES AND RULES

The following statutes and Federal Rules of Civil Procedure are the only ones relevant to these proceedings:

1. 28 U.S.C. § 455 (Appendix at D-131 to D-135);

2. Fed.R.Civ.P. 26(c);

3. Fed.R.Civ.P. 30(b)(1); and

4. Fed.R.Civ.P. 37(b).

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit (memorandum opinion by Judges Anderson, Tang and Ferguson) was rendered on review of an appeal from the district court's dismissal of Monzello's action pursuant to 28 U.S.C. § 1291. Monzello's petition is timely pursuant to 28 U.S.C. § 2101 and to the 30-day extension of time granted by Justice Rehnquist on October 23, 1984. As set forth in greater detail below, the Court of Appeals' decision was based upon established sanctions contained in Fed.R.Civ.P. 37(b) for a party's failure to cooperate in requested discovery and to comply with court-ordered discovery. As a result, the Court of Appeals'

decision does not present the special and important reasons which are normally required for this court to grant a writ of certiorari pursuant to U. S. Sup. Ct. Rule 17, 28 U.S.C.

STATEMENT OF THE CASE

After Monzello's charges of age discrimination had been dismissed for lack of merit by both the Equal Employment Opportunity Commission and the State of California Fair Employment and Housing Commission, she filed the present action on September 22, 1982, alleging she had been "constructively discharged" in violation of the Age Discrimination in Employment Act of 1967, as amended. 29 U.S.C. § 621 *et seq.* During the following eight months, Monzello knowingly and deliberately mocked the federal judicial process. She wilfully refused to appear for her deposition for more than six months and wilfully violated at least three court orders requiring her to appear for her deposition. She further exacerbated matters by purposefully and continuously engaging in abusive and profane conduct toward representatives of the Automobile Club and members of the federal judiciary. As a result of Monzello's bad faith conduct, the district court had no alternative but to dismiss her action.

It all began on October 14, 1982, when the Automobile Club noticed Monzello's deposition and a production of documents for November 2 and 3. Six days later, Monzello filed an "answer", rejecting these discovery requests as "premature". Monzello then refused to discuss the reasons for her refusal to appear either by telephone or at an Early Meeting of Counsel held November 1, pursuant to local district court rules ("local rules"). Instead, on November 1, Monzello filed a frivolous motion for a protective order. However, she failed to comply with the meet and confer provisions of the local rules, which subsequently caused her motion to be taken off calendar. During the

next two months, the Automobile Club was unsuccessful in its repeated attempts to have Monzello agree to a date for her deposition or to have Monzello cooperate in following the procedures set forth in the local rules for resolution of discovery disputes.

On December 3, 1982, Monzello filed a motion to disqualify Judge Rafeedie because of alleged bias. Her motion was premised upon a preposterous conspiracy called "the *FRENCH* Connection", supposedly evidenced by the fact that Rafeedie's confirmation as a district court judge had been sent to William French Smith as attorney general, who had previously served on the Automobile Club's board of directors in 1980. On January 3, 1983, Judge Hall denied Monzello's motion.[2]

On January 7, 1983, the Automobile Club moved for an order compelling Monzello to appear for her deposition, to produce documents and to pay sanctions pursuant to Fed.R. Civ.P. 37(d). Prior to the February 1 hearing on this motion, Monzello again engaged in wilful and bad faith conduct in an attempt to avoid having her deposition taken. First, on January 12, she threatened to seek a court order to end discovery immediately, even though none had been had. Two days later, she filed a pleading in which she unsuccessfully attempted to persuade the district court that the Automobile Club had not complied with the local rules in filing its motion. Finally, only a few days before the hearing, Monzello requested a seven-week continuance. Monzello claimed that she had insufficient time to respond to the motion even

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[2]*See* Appendix at D-146 to D-149 for the transcript of the January 3, 1983 hearing on Monzello's motion, and A-13 to A-15 for Judge Hall's order.

though she had been given more than the notice required under the local rules.[3]

At the February 1 hearing, Magistrate McMahon denied Monzello's request for a continuance. Monzello then refused to discuss the merits of the motion, claiming she was not prepared to do so. Magistrate McMahon, in an order filed February 10, ordered Monzello to appear for her deposition on March 8, to produce documents at that time and to pay $500 in sanctions.[4]

Even though Monzello claimed to be unprepared at the February 1 hearing, that very same day she filed a second motion for a protective order, which addressed the *same* issues raised by the Automobile Club in its motion. This conduct was further evidence of Monzello's bad faith.[5] Monzello asked that her deposition be cancelled or that the court require it to be taken in her home with the examination limited to one day for a total of seven hours. Monzello also filed a motion to appeal Magistrate McMahon's order. Both motions were consolidated and taken under submission without oral argument.

On March 7, 1983, the clerk to the district court orally notified the Automobile Club that both motions had been

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[3]By trying to continue the hearing from February 1 to March 22, Monzello undoubtedly thought that she could avoid having her deposition taken since the hearing would then have occurred only nine days prior to the district court's previously-established discovery cut-off date of April 1.

[4]The transcript of the February 1 hearing is set forth in the Appendix at D-1 to D-40, and the February 10 order is set forth in the Appendix at D-41 to D-48.

[5]In filing this motion, Monzello again failed to comply with the meet and confer provisions of the local rules, even though her earlier motion had been taken off calendar for that reason. Nonetheless, the district court considered her motion on the merits, giving Monzello every benefit of the doubt.

denied and that Monzello's deposition should go forward the next day as ordered. Both the clerk and the Automobile Club unsuccessfully attempted to notify Monzello of the order by telephone. When Monzello did not appear for her deposition on March 8, the Automobile Club sent telegrams to both of her residences of record, advising her that her motions had been denied and that she must appear for her deposition. Monzello neither appeared nor contacted the Automobile Club to arrange a mutually agreeable alternative date.

The district court's written order denying Monzello's motions was not entered until March 18.[6] Accordingly, the Automobile Club filed an ex parte motion requesting new court-ordered deposition dates. At the direction of the district court, the Automobile Club submitted a proposed order, setting Monzello's deposition for April 19 and 20. A copy of this proposed order was served by mail upon Monzello.[7] This order, which was signed by Judge Rafeedie on April 7, advised Monzello, as had the previous February 10 and March 18 orders, that her failure to comply with the order could result in the dismissal of her action.

At the district court's instructions, the Automobile Club mailed two copies of the April 7 order to Monzello, one by express mail and one by certified mail. These orders were all returned by the Post Office as "unclaimed." (Note: At the May 23, 1983 hearing on the Automobile Club's motion to dismiss, Monzello contended that she was not required to appear for her April 19 deposition because she had never received the court's order. Significantly, Monzello did not claim that she was ignorant of the court's order or unaware of the several attempts by the Post Office to deliver the

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[6]Judge Rafeedie's Memorandum Opinion and Order is set forth in the Appendix at D-48 to D-59.

[7]This proposed order was never returned to counsel for the Automobile Club and must have been received by Monzello.

notices. Instead, Monzello simply claimed that she did not have to accept service of the order because "the defendant is not the Court.")

When Monzello failed to appear for her deposition on April 19, counsel for the Automobile Club telephoned Monzello's residence. A woman, whose voice counsel recognized as that of Monzello, answered the telephone, and the following conservation occurred:

MR. ZAPP: "Mrs. Monzello?"

MRS. MONZELLO: "Who is calling?"

MR. ZAPP: "This is Jim Zapp calling."

MRS. MONZELLO: "You have the wrong number."

Monzello abruptly hung up the telephone and refused to answer the telephone when counsel for the Automobile Club again telephoned her residence twice within the next four minutes, permitting the telephone to ring approximately twelve times on each occasion.

Monzello and her husband engaged in other wilful misconduct during the course of her action even beyond the foregoing refusals to comply with court orders. They harassed Automobile Club management employees and their families, sent correspondence containing offensive and profane remarks to management representatives and counsel for the Automobile Club and made denigrating remarks about the district court. The most graphic example of such conduct was the memorandum Monzello filed in opposition to the Automobile Club's motion to dismiss her action. In this pleading, Monzello made insulting and profane remarks about counsel for the Automobile Club, Judge Rafeedie and Attorney General Smith. Specifically, she referred to Judge Rafeedie as "an intellectual midget", a "Prince of Clowns", and "a mountain of physical blubber". Finally, she stated

"[T]he Federal Judicial System is based on *legalized anarchy.*" (Emphasis in original.)

At the May 23 hearing regarding the Automobile Club's motion to dismiss her action, Monzello admitted that she and her husband had written the above-referenced profanity and that she had refused to accept service on the copies of the orders mailed by the Automobile Club at the court's request. Based upon her repeated and wilful refusals to comply with the local rules, the Federal Rules of Civil Procedure and several court orders, the district court imposed an additional $500 in sanctions and dismissed the action. Even then, the district court gave Monzello a grace period of more than 30 days, until June 30, 1983, within which she could have her action reinstated by paying the $1000 in sanctions and by agreeing to have her deposition taken without any conditions precedent.[8] Instead, Monzello chose to appeal the dismissal of her action.

During her appeal, Monzello continued to engage in similar bad faith conduct. She filed motions accusing Judge Hall, Magistrate McMahon and Judge Rafeedie of deliberately and purposely falsifying the transcripts of the January 3, February 1, and May 23 hearings, respectively. When the district court denied her motions, she refiled the same motions in the Court of Appeals, requesting an evidentiary hearing on these alleged deliberate falsifications of the record. These motions were supported only by her conclusory statements that these transcripts did not state or show what had occurred and what was said. She failed to produce any evidence whatsoever as to how the records had supposedly been altered or falsified. The Court of Appeals affirmed the dismissal of the action and denied Monzello's motions, finding her conclusory statements insufficient to support an order for an evidentiary hearing.

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[8]The transcript of the May 23 hearing is set forth in the Appendix at D-60 to D-90, and the order of dismissal is set forth at A-9 to A-12.

ARGUMENT

I

THIS CASE PRESENTS NONE OF THE SPECIAL OR IMPORTANT REASONS FOR WHICH A WRIT OF CERTIORARI IS GENERALLY GRANTED

A. The Discovery Orders and Dismissal of Monzello's Action

This case presents none of the special or important reasons for which a writ of certiorari will be granted. *See* U. S. Sup. Ct. Rule 17, 28 U.S.C. It is settled law that dismissal is proper when a party wilfully refuses to comply with legiitimate court-ordered discovery. In *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, *reh'g denied*, 429 U.S. 874 (1976), this Court expressly authorized the use of the ultimate sanction of dismissal under Fed.R.Civ.P. 37(b) when litigants have refused to comply with court-ordered discovery. This Court reasoned as follows:

> But here, as in other areas of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the District Court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. 427 U.S. at 643.

This Court went on to state that even if a particular litigant might comply with future discovery orders, dismissal was still proper under Rule 37 to prevent parties in other actions from wilfully disobeying district court discovery orders.

Further, this Court clearly has prohibited appellate courts from interfering with a district court order issued pursuant to Fed.R.Civ.P. 37(b) unless the district court has

abused its discretion. In *National Hockey League,* this Court stated:

> The question, of course, is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in so doing. *Id* at 642.

The decision rendered by the Ninth Circuit in the present case is entirely consistent with *National Hockey League* and with the decisions of other federal Courts of Appeals under Fed.R.Civ.P. 37(b). Indeed, the Second, Fifth, Eighth, and Ninth Circuits have each affirmed lower court dismissals for a party's refusal to comply with court-ordered discovery. *See Anderson v. Home Insurance Co.,* 724 F.2d 82, 84 (8th Cir. 1983) (dismissal of pro se action for repeated failure to answer interrogatories was not an abuse of discretion); *Wyle v. R. J. Reynolds Industries, Inc.,* 709 F.2d 585, 589-91 (9th Cir. 1983) (dismissal of action affirmed for plaintiff's failure to comply with court-ordered discovery); *Anderson v. Air West, Inc.,* 542 F.2d 1090 (9th Cir. 1976) (dismissal of action proper because of wilful failure to appear for court-ordered depositions); *United States Freight Co. v. Penn Central Transportation Co.,* 716 F.2d 954 (2d Cir. 1983) (default judgment properly entered for defendant's wilful failure to comply with discovery order); *Vela v. Western Electric Co.,* 709 F.2d 375 (5th Cir. 1983) (dismissal of action not an abuse of discretion where plaintiffs repeatedly failed to comply with the court-ordered discovery); *Bonaventure v. Butler,* 593 F.2d 625 (5th Cir. 1979) (dismissal of action affirmed in light of plaintiff's repeated and deliberate refusals to appear for deposition).

In summary, this case presents neither an important nor an unresolved question of federal law, nor does it present a question upon which the federal Courts of Appeals have

ruled inconsistently. Rather, the Ninth Circuit applied the proper standard — abuse of discretion — and properly concluded that the district court had acted within its discretion in dismissing Monzello's action for her repeated and wilful refusals to comply with court-ordered discovery.

B. The Denial of Monzello's Motion to Disqualify Judge Rafeedie

The law is equally clear with respect to the role of a Court of Appeals in reviewing an order on a motion to disqualify a district court judge. There is no disagreement among the several Courts of Appeals that the applicable standard of review is whether the district court abused its discretion. *See e.g., Johnson v. Trueblood,* 629 F.2d 287 (3d Cir. 1980), *cert. denied,* 450 U.S. 999 (1981) (review of district court's action on refusal is by abuse of discretion standard); *In Re Federal Skywalk Cases,* 680 F.2d 1175 (8th Cir.), *cert. denied.* 459 U.S. 988 (1982) (role of Court of Appeals on review of motion to disqualify a judge is limited to deciding whether the district court's evaluation of the claim of prejudice was an abuse of discretion); *Phillips v. Joint Legislative Committee on Performance & Expenditure Review,* 637 F.2d 1014 (5th Cir. 1981), *cert. denied,* 456 U.S. 960 (1982), *reh'g denied,* 457 U.S. 1140 (1982), *cert. denied,* 456 U.S. 971 (1982), *reh'g denied,* 458 U.S. 1116 (1982); *Blizard v. Frechette,* 601 F.2d 1217 (1st Cir. 1979).

Further, it is established law that the moving party has the burden to allege *facts* from which a reasonable person would fairly infer that a judge is personally and extrajudicially biased and prejudiced. *See United States v. Carignan,* 600 F.2d 762, 763 (9th Cir. 1979); *Wood v. McEwen,* 644 F.2d 797 (9th Cir. 1981), *cert. denied.* 455 U.S. 942 (1982).

II

THE NINTH CIRCUIT PROPERLY APPLIED THE FOREGOING LEGAL PRINCIPLES TO THE FACTS OF THIS CASE

A. The Discovery Orders and the Dismissal of the Action

Monzello's Petition for a Writ of Certiorari is but a mild sampling of the type of conduct to which the Automobile Club and the lower courts have been subjected during the prosecution of this action. The transcripts of the hearings held before the district court illustrate Monzello's hostile and obstructive conduct. The record evidence of Monzello's deliberate disobedience of court orders is unequivocal. For more than six months Monzello refused to establish a mutually agreeable date upon which her deposition could be taken. She wilfully refused to comply with three different court orders concerning her deposition. Indeed, she even attempted to avoid service of the April 7 court order so she could claim that such order was ineffective.[9]

Finally, Monzello's refusal to talk to counsel for the Automobile Club on the last court-ordered deposition date, April 19, and her conduct at the May 23 hearing make it clear that Monzello never gave any indication to the district court that she would comply with any future discovery orders. Accordingly, dismissal of her action was the only alternative available to the district court. Moreover, dismissal was necessary to deter parties in other law-

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[9]Service by mail is complete upon mailing. Fed.R.Civ.P. 5(b). Non-receipt of such mail does not vitiate service. *Rifkin v. United States Lines*, 24 F.R.D. 122, 123 (S.D.N.Y. 1959). Indeed, the Fifth Circuit affirmed dismissal of an action with prejudice under virtually identical circumstances in *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir. 1980), where the plaintiff, like Monzello, purposely avoided delivery of notices sent by certified mail, causing the documents to be returned as "unclaimed".

suits from similarly disobeying discovery orders of district courts. *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, *reh'g denied*, 429 U.S. 874 (1976).

B. The Denial of Monzello's Motion to Disqualify Judge Rafeedie

The Ninth Circuit properly determined that Monzello did not meet her burden to support disqualification by merely making conclusory allegations of Judge Rafeedie's alleged bias. *See Wood v. McEwen*, 644 F.2d 797, 802 (9th Cir. 1981), *cert. denied*, 455 U.S. 942 (1982). The Ninth Circuit also properly concluded that Monzello's attempt to present *new* evidence in support of her allegations, namely a newspaper article wherein Judge Rafeedie made generalized comments concerning employment-related lawsuits, was not properly before the court on appeal. *See G-K Properties v. Redevelopment Agency*, 577 F.2d 645, 648 (9th Cir. 1978).

Even if the article was considered, it is well settled among the circuits that general statements made by a judge do not constitute the showing of personal bias against a specific party like Monzello, which is necessary for disqualification. Such was the Ninth Circuit's ruling in the present case. *See Wood v. McEwen*, 644 F.2d at 802; *Rosquist v. Soo L. Railroad*, 692 F.2d 1107 (7th Cir. 1982) (district judge's expression of views on general subject of attorneys does not require disqualification from deciding such issue); *United States v. Norton*, 700 F.2d 1072 (6th Cir.), *cert. denied*, 461 U.S. 910 (1983) (general statements by district judge concerning prevailing societal attitudes toward controversial groups with which defendants were affiliated was insufficient to require refusal since the challenged remarks were not directed at the defendants themselves).

C. The Denial of Monzello's Motions for an Evidentiary Hearing on Alleged Falsifications of the Record in the District Court

The Ninth Circuit properly denied Monzello's request for an evidentiary hearing concerning alleged falsifications of the reporter's transcripts for the January 3, 1983, February 1, 1983 and May 23, 1983 hearings, respectively. Each of these transcripts was reviewed by the district court pursuant to Fed.R.App.P. 10(e). In each case the district court found the record to be accurate and Monzello's motion to be without merit.[10] The recollection of the district court as to the accuracy of the reporter's transcript is conclusive. *See United States v. Mori,* 444 F.2d 240 (5th Cir.), *cert. denied,* 404 U.S. 913 (1971). Moreover, Fed.R.App.P. 10(e) does not authorize adding to the record statements which were never made or events which never occurred. *See Shew v. Brownell,* 219 F.2d 301 (9th Cir. 1955).

The foregoing aside, the burden is on the moving party to present substantial evidence before an evidentiary hearing will be granted concerning such charges. In *Moder v. United States,* 62 F.2d 462 (D.C. Cir. 1932), *cert. denied,* 288 U.S. 599 (1933), the Court of Appeals for the District of Columbia discussed the necessary quantum of proof:

> It is hardly conceivable that a more serious charge than [deliberate and intentional falsification of the record on appeal] could be made against a judge or an attorney, and to justify it the proof should be *unquestionable.* 62 F.2d at 463. (Emphasis added.)

Monzello failed to submit any evidence warranting an evidentiary hearing. She simply proffered self-serving statements that the record of each proceeding did not state or show what actually occurred or what was said. Her affi-

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[10] *See* Appendix at A-19 to A-23.

davit filed in support of her motions did not present any factual evidence as the manner by which the record had supposedly been falsified. Accordingly, the Court of Appeals' denial of her motions was entirely appropriate.

D. Monzello Was Not Improperly Denied a Jury Trial

The Ninth Circuit properly rejected Monzello's contention that the district court was without the authority to dismiss her action because it denied her right to a jury trial. The fact that a party may otherwise be entitled to a jury trial does not preclude dismissal of the complaint at a pre-trial stage. Indeed, it has been specifically held that a Rule 37 dismissal does not violate the right to a jury trial where a party fails to comply with court-ordered discovery. *See Wyle v. R. J. Reynolds Industries, Inc.*, 709 F.2d 585, 592 (9th Cir. 1983); *McMullen v. Travelers Insurance Co.*, 278 F.2d 834, 835 (9th Cir.) (per curiam), *cert. denied*, 364 U.S. 867 (1960).

III

CONCLUSION

The Petition for a Writ of Certiorari should be denied. The questions presented by this case do not warrant Supreme Court review. The applicable law is well settled, and the lower courts properly applied the law to the facts of this case. The district court did not abuse its discretion in issuing the referenced discovery orders or in dismissing Monzello's action when she wilfully and consistently disobeyed these orders. Monzello's flagrant contempt for the judicial process should not be rewarded.

DATED: February 14, 1985

Respectfully submitted,

JAMES A. ZAPP
PAUL, HASTINGS, JANOFSKY
& WALKER

Attorneys for Respondent

Supreme Court, U.S.
FILED
MAR 2 1985
ALEXANDER L. STEVAS
CLERK

NUMBER 84-1174

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM 1984

ESTHER C. MONZELLO

Petitioner

VS

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

ESTHER C. MONZELLO

IN PROPRIA PERSONA

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22pp

Questions Presented For Review

The Questions Presented For Review are as stated in the "Petition For A Writ of Certiorari" - page 1 thru 13.

Parties To The Proceedings

Parties to the Proceedings are as stated in the "Petition For A Writ of Certiorari" - page 13.

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Opinions and Judgments Delivered In The Courts Below

Opinions and Judgments Delivered in the Courts Below are as stated in "Petition For A Writ of Certiorari" - pages 14 & 15.

Jurisdiction

On page 2 and 3 of Respondent's Brief in Opposition Respondent's remarks relative to jurisdiction are superfluous and irrelevant. The jurisdiction of this Court is invoked pursuant to 28 United States Code Section 1254(1) - page 15 of "Petition For A Writ of Certiorari". For the information of the Respondent the following is quoted: Jurisdiction to Review Decisions of Federal Courts - Courts of Appeals - 2.1/ Certiorari jurisdiction over courts of appeals - plenary nature. Congress has provided, in 28 U.S.C. Sec. 1254(1), that the Supreme Court may review cases in the

courts of appeals by a "writ of certiorari upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." It is to be noted that the jurisdiction thus granted is of an extremely comprehensive nature. It extends to "any civil or criminal case" in the courts of appeals. There are no limitations as to the parties, the status of the case, or the amount in controversy. Nor are there any restrictions as to the matter at issue or the nature or form of the decision below.[1] And while various regulatory statutes make provision for review by the Court on certiorari to the courts of appeals of cases arising under those statutes such provisions merely reflect the unhampered scope of Sec. 1254(1) without in any way detracting therefrom. In short, the Supreme Court's certiorari jurisdiction over cases coming from the federal courts of appeals is plenary.

[1] The fact that a court of appeals has

ordered that its opinion not be published is no bar to Supreme Court review. See Transamerican Freight Lines v. Brada Miller Freight Systems, 423 U.S. 28, 34. Apparently the Respondent is unfamiliar with the word plenary so the definition is furnished here: PLENARY - "literally,... full, entire, complete, absolute, perfect or unqualified"

Apparently the Respondent is unfamiliar with the word Jurisdiction so the definition is furnished here: JURISDICTION: the power to hear and determine a case. 147 F.2d 759, 761.

Constitutional Provisions, Statutes Ordinances and Regulations

Constitutional Provisions, Statutes, Ordinances and Regulations are as stated in "Petition For A Writ of Certiorari" - pages 15 and 16.

Statement of the Case

Statement of the case is as stated in "Petition For A Writ of Certiorari" -

pages 16 thru 26.

Petitioner's Statement Of Response To Respondent's Brief In Opposition

This reply brief is submitted pursuant to Supreme Court Rule 22.5; 28; 33 and 34.4. Due to page limitations imposed by Rule 33 this reply brief will not cover all of the pleadings made by Respondent in the Brief in Opposition. No priority of pertinency is to be implied by the order in which Petitioner responds to the pleadings made in Respondent's Brief in Opposition. Respondent's Brief in Opposition as submitted is an assault on and an insult to the intelligence of this Court. Specifically the Respondent semantically misleads the Court in Respondent's presentation of the facts that relate to this case. One can surmise that this Court could expect more from Attorneys for the Respondent where, considering that one of the Attorneys - Leonard S. Janofsky - was a former

President of the American Bar Association.

I

Review of Respondent's

Statement Of The Case

A. False Accusation by Respondent that Petitioner Accused Magistrate James W. McMahon of Falsifying Transcript of February 1, 1983

On page 8 lines 18 thru 37 Respondent grossly misleads this Court by asserting that Petitioner filed a motion in the District Court accusing Magistrate James W. McMahon of deliberately and purposely falsifying the Transcript of February 1, 1983 (App.D1 thru D40) and that Petitioner refiled in the Court of Appeals a motion accusing Magistrate James W. McMahon of deliberately and purposely falsifying the Transcript of February 1, 1983 (App.D1 thru D40) and asking for an evidentiary hearing on this accusation. The records in the Courts below (District Court filings - Doc. #125; Doc. #126; Doc. #127; Doc. #129; Doc. #130;

Doc. #131; Doc. #132; Doc. #133; Doc. #134; Doc. #135; Doc. #136; Doc. #137; Doc. #138; Doc. #139; Doc. #140 - 9th Circuit Court of Appeals Court filings by date - June 11, 1984; June 11, 1984; June 11, 1984; June 11, 1984; June 11, 1984; June 11, 1984; June 11, 1984; June 15, 1984; June 19, 1984; July 20, 1984 as of July 3, 1984) show that this motion was never filed. Petitioner has never at any time stated or implied that Magistrate McMahon falsified this transcript. The Transcript of February 1, 1983 (App.D1 thru D40) is accurate in every detail.

B. Complaint by Respondent of Petitioner's Use of the Word "Anarchy" in District Court Pleadings

On page 8 lines 1 & 2 Respondent complains about Petitioner's use of the word "anarchy". Petitioner points out to this Court that only recently Judge Rehnquist

in a speech used the word "anarchy" in discussing this Court. Petitioner suggests that the other Justices ask him for his specific "quote".

C. Complaint by Respondent of Petitioner's Contention of Involvement of William Frenchie-Boy Smith in the Appointment of Rafeedie to the Federal Bench

On page 4 line 6 thru 14 Respondent complains about Petitioner's contention that William Frenchie-Boy Smith was closely involved in Rafeedie's appointment as a Federal Judge. For the information of the Court Frenchie-Boy Smith's relationship was not only at the Federal level but the State level. Rafeedie was appointed by President Reagan, when he was Governor of California, to the Municipal Court in 1969 and Superior Court in 1970. William Frenchie-Boy Smith states in The Bulletin of the

Federal Courts - "The Third Branch" - page 4 of June 1981 that: "In California, during President Reagan's tenure as Governor, I participated with him in judicial selections."

D. Respondent's Misleading Statement that Petitioner was Given A 30 Day Grace Period

On page 8 lines 12 thru 14 Respondent contends that Petitioner was given a grace period of more than 30 days within which Petitioner could have her action reinstated. Petitioner points out to this Court that the record (App.D60 thru D90) (App.D88 line 12 thru 14) does not mention 30 days or dismissal with prejudice.

The record shows that Rafeedie entered two orders: -

One order was unsigned with no date certain for compliance and served on the Petitioner but not filed with the Court (App.A1 thru A7).

A second order was signed with a date certain for compliance and not served on the Petitioner and filed with the Court (App.A8 thru A12).

Petitioner points out to this Court that this was a trick on the part of Rafeedie to mislead Petitioner so that Petitioner would not be able to file a timely appeal on the order since the date June 30 was exactly 30 days from the date of entry of the order and had not Petitioner been alert and gone by bus 75 miles from Port Hueneme to the file room of the District Court and located a copy of the signed order Petitioner would have been unable to file a timely appeal if Petitioner had not done so before June 30 since the law states that one must file an appeal with the District Court within 30 days from date of entry of order.

Attention of the Court is invited to (App.D50 thru D51) where attorney for the

Respondent states that Rafeedie entered two separate dismissal orders.

In signing this dismissal order on May 26, 1983 (App.A12) Rafeedie violated Local Rule 7A (App.D106 thru D107).

E. Respondent's Complaint of Petitioner's Semantic Construction of Petitioner's Pleadings in the District Court

On page 7 Respondent complains bitterly about Petitioner's conduct and semantic construction of Petitioner's pleadings. What Respondent fails to point out to the Court is that these pleadings were in response to specific issues raised by the Respondent (App.D83 line 6 thru 12). If the Court is interested in this semantic quibbling Petitioner suggests that the Court examine District Court Document #99 and #108. Petitioner points out to this Court the Respondent on three different occasions raised before the District Court the subject of Petitioner Esther C.

Monzello's "ass". These occasions were Doc. #58 page 15 lines 24-25; Doc. #99 page 19 lines 17-20; page 21 lines 6-8. In addition the subject was raised again by Respondent in Respondent's Brief in the 9th Circuit - page 22 lines 8 & 9; page 23 lines 15 & 16. Petitioner also points out that Rafeedie applies the grossest of personal insults to Petitioner when he addressed Petitioner as a "sweet lady" (App.D62 line 8). Finally, Respondent with the approval (App.D69 lines 21-23; D70 lines 2 & 3) of Rafeedie referred to Petitioner 30 times in pleadings before the Court as "frivolous" (Doc. #58 page 7 line 2; Doc. #71 page 9 line 24; Doc. #72 page 4 line 7, page 14 line 22 & 25, page 15 line 18; Doc. #78 page 8 line 1; Doc. #99 page 2 line 20 & 22, page 6 line 1 & 2 & 6, page 13 line 4 & 10 & 11, page 26 line 9 & 14; Doc. #108 page 2 line 1 & 6; Doc. #129 page 4 line 7 &10; Doc. #130 page 4 line line 12 & 15; Doc. #131 page 5

line 13) (In the Appeal Court - Appellee's Brief - page 5 lines 18 & 19; page 7 line 12; page 49 line 22; page 50 line 11). Respondent has repeated this terminology on page 3 line 32 of his Brief in Opposition.

A joke Petitioner's husband told her emphasizes the semantic accent of the word "frivolous".

> "The three oldest professions are lawyering, whoring, pimping. There was a young woman who graduated from law school. She obtained her license and went out to practice. The going was rough - not much business. Among her first clients was a pimp. Through her efforts to help him she learned a great deal about the business of pimping. Some of the girls he worked with made a great deal more than she made. The young lawyer decided she would pick up some "lucre" on the side. The pimp brought her a few clients and she was on the verge of giving up lawyering -

things were so good. One day after she finished a trick she met her pimp -

Pimp

What the hell you seem depressed. Didn't the last guy take care of you?

Lawyer

Oh, yes, the money was good.

Pimp

What the hell is the matter then?

Lawyer

He insulted me.

Pimp

How in the hell can you insult a whore?

Lawyer

He didn't call me a whore - he called me a FRIVOLOUS WHORE!!!!

The End

II

Petitioner's Response To Respondent's Argument

Due to page limitations imposed by Rule 33 Petitioner's Response to the Argument section of Respondent's Brief in Opposition will be limited. Basically Respondent's response is "legalistic dribble". Respondent's response is simply "playing with words". Choosing one of Respondent's cases to respond to namely "National Hockey League vs Metropolitan Hockey Club Inc" Petitioner concludes that Respondent is only imitating the Court in its "Order". Petitioner after reviewing "National Hockey League's Petition For A Writ of Certiorari" and "Metropolitan Hockey Club Inc.'s Brief In Opposition" and the Order issued by the Court concludes the whole process was an "intellectual sham" a "playing with words". The Order issued by the Court indicates the Judges who issued the Order live in a "dream world" far

removed from the world of actual litigation. The Court indicates the Court lacks intellectual integrity to resolve the "administrative problems" of the judicial system without infringing on the rights of litigants. The Order issued by the Court results in the "intellectual corruption" of our courts and the demoralization of our society.

Finally the records show that Respondent served an improperly noticed deposition on October 14, 1982. (Doc. #7)

Petitioner did not at any time violate the local rules of the Court or the Federal Rules of Civil Procedure and did not at any time refuse to comply with any order of the Court.

Esther C. Monzello

ESTHER C. MONZELLO
IN PROPRIA PERSONA